



west virginia department of environmental protection

Environmental Enforcement
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0470 Fax: (304) 926-0488

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

June 27, 2013

Robert L. Hogan
Bowles Rice, LLP
PO Box 1386
Charleston, WV 25325-1386

CERTIFIED RETURN RECEIPT REQUESTED

91 7199 9991 7032 6245 5778

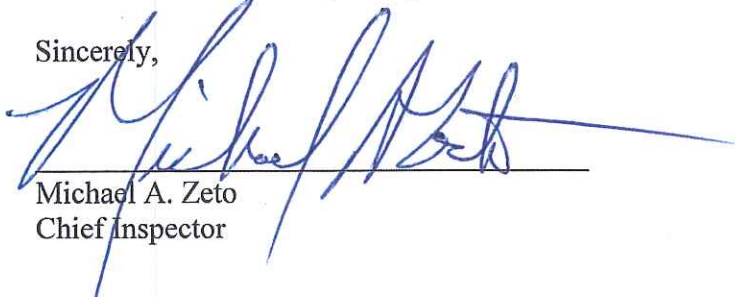
**RE: Violation of Chapter 22, Article 11
of the WV State Code**

Dear Mr. Hogan:

Enclosed is 2nd revised CONSENT ORDER NUMBER 7803 dated June 27, 2013. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to Dan Ryan Builders, Inc. violating Chapter 22, Article 11 of the WV State Code at its facilities in or near Martinsburg and Inwood in Berkeley County, and Kearneysville and Charles Town in Jefferson County, West Virginia. This revision is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,



Michael A. Zeto
Chief Inspector

Enclosure

cc: Scott G. Mandirola, Director, DWWM (via e-mail)
Yogesh Patel, Asst. Director, DWWM/Permits (via e-mail)
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
Laura McGee, Environmental Resources Specialist, EE (via e-mail)
Robin C. Dolly, Environmental Inspector Supervisor, EE/WW (via e-mail)
Matthew Alt, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)
Keith Tunell, Dan Ryan Builders, Inc.

Promoting a healthy environment.



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**

TO: Dan Ryan Builders, Inc.
Attn: Keith Tunell
60 Thomas Johnson Drive
Frederick, MD 21702

DATE: June 27, 2013

ORDER NO.: 7803

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 Dan Ryan Builders, Inc. (hereinafter "DRB").

FINDINGS OF FACT

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

Charles Town

1. DRB is conducting land disturbance activity in Charles Town, in Jefferson County, West Virginia.
2. On January 4, 2013, 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 State Code and WV Legislative Rules was observed and documented:
 - a. 22-11-8 and 47CSR10 - Dan Ryan Builders commenced operation of a construction project and associated land disturbance greater than one (1) acre without authorization pursuant to a WV/NPDES permit.

Promoting a healthy environment.

As a result of the aforementioned violation, Notice of Violation (NOV) No. I13-19-002-MJA was issued to DRB.

Inwood

3. DRB is conducting land disturbance activity near Inwood, in Berkeley County, West Virginia.
4. On January 4, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of WV State Code and WV Legislative Rules was observed and documented:
 - a. 22-11-8 and 47CSR10 - Dan Ryan Builders commenced operation of a construction project and associated land disturbance greater than one (1) acre without authorization pursuant to a WV/NPDES permit. WVDEP personnel informed DRB that a WV/NPDES permit was required to cover construction activities at the aforementioned site, and DRB indicated its intention to apply for a WV/NPDES permit.
- As a result of the aforementioned violation, NOV No. I13-02-001-MJA was issued to DRB.
5. On January 25, 2013, WVDEP personnel performed a record review and determined that DRB had not applied for the required WV/NPDES permit.

Kearneysville

6. DRB is conducting land disturbance activity near Kearneysville, in Jefferson County, West Virginia. DRB was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR102675, on October 19, 2006.
7. On January 8, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of DRB's WV/NPDES permit were observed and documented:
 - a. Section D.1 - DRB failed to operate and maintain all erosion and sediment control devices installed on the project. Specifically, DRB failed to maintain the construction entrance to the project to prevent mud from migrating off of the site.
 - b. Section D.4.a - DRB failed to keep a copy of the Storm Water Pollution Prevention Plan (SWPPP) and Groundwater Protection Plan (GPP) on site.
 - c. Section G.4.e.2.A.i.c - DRB failed to re-seed any and all areas where a minimum uniform grass cover of 70% had not been achieved.
 - d. Section G.4.c - DRB failed to modify the approved SWPPP to reflect changes to the time line of construction as well as the large waste area situated on a portion of the site.

As a result of the aforementioned violations, NOV Nos. I13-19-009-MJA, I13-19-010-MJA, I13-19-011-MJA, and I13-19-012-MJA were issued to DRB.

Martinsburg

8. DRB is conducting land disturbance activity near Martinsburg, in Berkeley County, West Virginia. DRB was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR104264, on June 2, 2009.

9. On January 16, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of DRB's WV/NPDES permit were observed and documented:

- a. Section D.1 - The Permittee failed to construct and operate sediment basin "A" in accordance with project plans and specifications. Specifically, no trash rack, fence, proper de-watering device, or fore bay were installed. Additionally, active erosion was allowed to occur within the basin footprint.
- b. Section D.1 - The Permittee failed to construct and operate sediment basin "C" in accordance with project plans and specifications. Specifically, no fore bay, fence, or proper dewatering device were installed. Additionally, active erosion was allowed to occur within the basin footprint.
- c. Section B - Contradictory to DRB's approved Storm Water Pollution Prevention Plan (SWPPP), the Permittee failed to complete construction of sediment basin "B" prior to commencement of other earth moving activities. This basin remained partially constructed, while a waste area above continued to discharge sediment laden water without a proper receiving basin.
- d. Section G.4.e.2.A.i - The Permittee failed to apply temporary seed and mulch to all areas where construction activity had ceased for twenty-one (21) days or more.
- e. Section G.4.e.2.C.vi - The Permittee failed to keep records of weekly erosion and sediment control inspections on site for review by the director.
- f. Section G.4.a - The Permittee failed to keep a copy of the approved SWPPP and GPP on site for review by the director.
- g. Section G.4.b.8 - The Permittee failed to display the required Public Notice Sign for the duration of the project.
- h. Section G.4.c - The Permittee failed to modify the approved SWPPP to reflect the addition of the waste site and the extended construction schedule.
- i. Section G.4.e.2.A.ii.d - The Permittee failed to stabilize all diversions conveying water on project.

As a result of the aforementioned violations, NOV Nos. I13-02-013-MJA, I13-02-019-MJA, I13-02-016-MJA, I13-02-017-MJA, I13-02-014-MJA, I13-02-015-MJA, and I13-02-018-MJA were issued to DRB.

10. On March 22, 2013, DRB was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106532, for regulated activities at its Charles Town site.

11. On April 9, 2013, WVDEP personnel and representatives of DRB met to discuss the terms and conditions of this Order.
12. On May 22, 2013, a representative of DRB provided a letter of response to WVDEP personnel concerning the specific facts and circumstances surrounding the violations included in this Order. The correspondence also includes completed, ongoing, and proposed actions taken by DRB to correct the aforementioned violations. Specifically, DRB represents that it is working on implementation of a company-wide plan to address evolving erosion and sediment control needs. In addition, DRB represents that it has implemented company policies to handle permitting for each new project site, as well as corresponding onsite signage, documentation logs, and SWPPP manuals.

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. DRB shall immediately take all measures to initiate compliance with all terms and conditions of its permits and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, DRB shall submit an administratively complete application for WV/NPDES permit coverage for regulated activities in Inwood. The application shall be submitted to:

WVDEP DWWM-Permitting Section
Attn: Construction Stormwater Team
601 57th Street SE
Charleston, WV 25304
3. Within ten (10) days of the effective date of this Order, DRB shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when DRB will achieve compliance with all terms and conditions of its WV/NPDES permits and pertinent laws and rules. The plan of corrective action shall be submitted to:

WVDEP Environmental Inspector Supervisor
NE Regional Environmental Enforcement Office
HC 63 Box 2545
Romney, WV 26757

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.

4. Because of DRB's West Virginia Code, Legislative Rule and permit violations, DRB shall be assessed a civil administrative penalty of thirty-two thousand nine hundred twenty dollars (\$32,920) 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. DRB 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, DRB 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, DRB 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 DRB 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, DRB 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 DRB becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and DRB 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 DRB 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 DRB (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 DRB 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 DRB 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 DRB, its successors and assigns.
7. This Order shall terminate upon DRB's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Kevin Fumett
Dan Ryan Builders, Inc.
DIVISION PRESIDENT - WASHINGTON WEST

7/11/13

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Evitts Run, UT to Evitts Run,
Mill Run, UT of Tuscarora Ck.

Responsible Party: Dan Ryan Builders, 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.

		FOF#												
Potential for Harm Factor		2a	4a	7a	7b	7c	7d	9a	9b	9c	9d	9e	9f	9g
Factor Range														
1)	Amount of Pollutant Released	1	1	1	1	1	1	1	1	2	2	1	1	1
	Toxicity of Pollutant	1	1	1	0	1	0	1	1	1	1	0	0	0
	Sensitivity of the Environment	1	1	1	0	1	0	1	1	1	1	0	0	0
	Length of Time	1	1	1	1	1	1	1	1	1	1	1	1	1
	Actual Exposure and Effects thereon	1	1	1	0	1	0	1	1	2	2	0	0	0
	Average Potential for Harm Factor	1	1	1	0.4	1	0.4	1	1	1.4	1.4	0.4	0.4	0.4
2)	Extent of Deviation Factor													
	Degree of Non-Compliance	3	3	2	2	2	2	3	3	3	2	2	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.

Potential for Harm to Human Health or the Environment	Extent of Deviation from Requirement		
	Major	Moderate	Minor
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	Minor	Major	\$2,000	1	\$2,000
4a	Minor	Major	\$2,000	1	\$2,000
7a	Minor	Moderate	\$1,500	1	\$1,500
7b	Minor	Moderate	\$1,200	1	\$1,200
7c	Minor	Moderate	\$1,500	1	\$1,500
7d	Minor	Moderate	\$1,200	1	\$1,200
9a	Minor	Major	\$2,000	1	\$2,000
9b	Minor	Major	\$2,000	1	\$2,000
9c	Moderate	Major	\$4,400	1	\$4,400
9d	Moderate	Moderate	\$3,400	1	\$3,400
9e	Minor	Moderate	\$1,200	1	\$1,200
9f	Minor	Moderate	\$1,200	1	\$1,200
9g	Minor	Minor	\$400	1	\$400
9h	Minor	Major	\$1,700	1	\$1,700
9i	Moderate	Major	\$4,200	1	\$4,200
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
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$29,900

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 -	30		\$8,970
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	(\$2,990)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,990)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$3,020
Penalty =			\$32,920

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:	

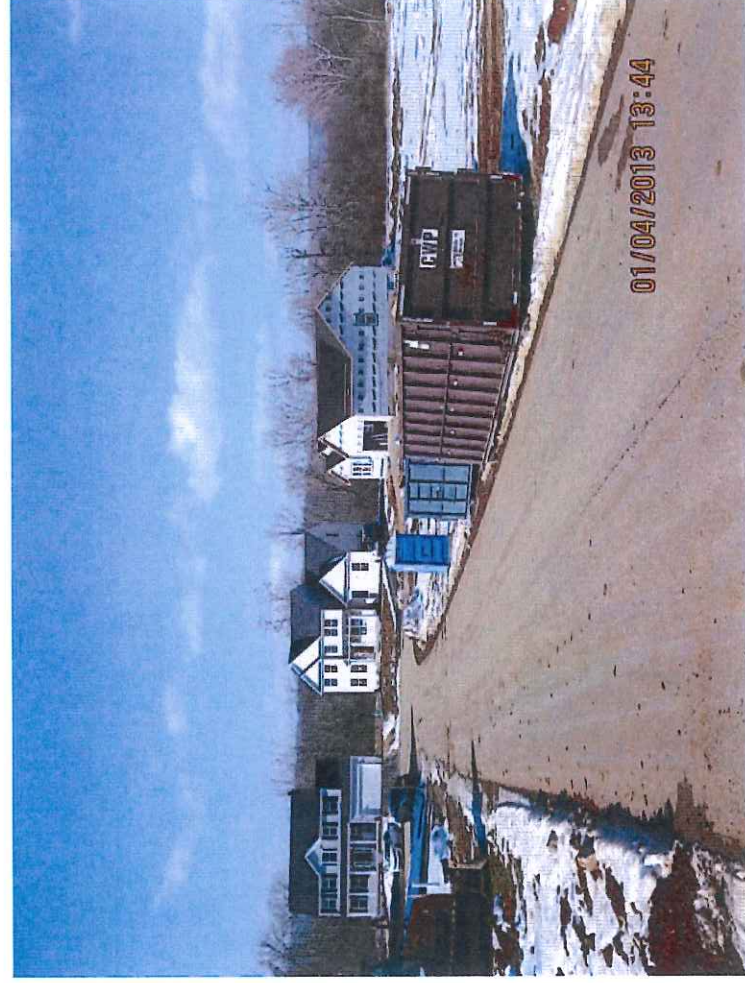
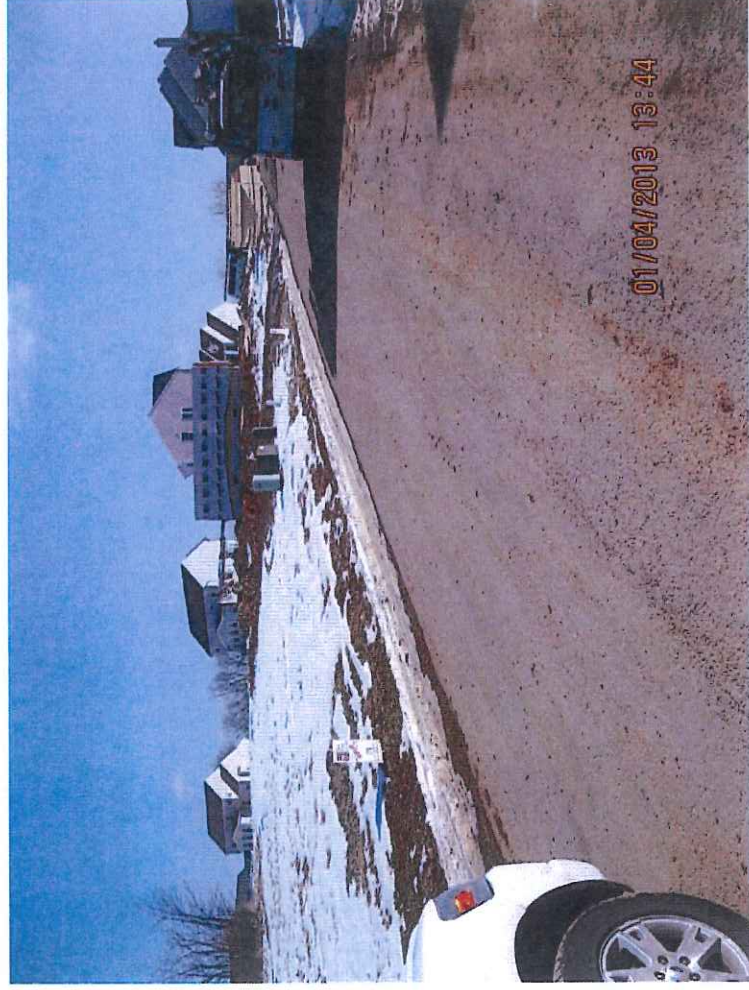
Charles Town: Unpermitted Land Disturbance



Inwood: Unpermitted Land Disturbance



Inwood: Unpermitted Land Disturbance



Kearneysville: Unstable spoil site on Quail Ridge Section II Phase III.



Martinsburg



Unstable waste site.



Unstable waste site.

Martinsburg



No trash rack on the emergency spillway of basin "A," a violation of the approved SWPPP.



Permanent orifice plugged with bucket.
No temporary orifice observed in basin "A," a violation of the approved SWPPP.

Martinsburg



No fore bay in basin "A." Active erosion in bottom of basin.



Partially constructed basin "B."

Martinsburg



Partially constructed basin "B."



Active erosion gullies near lot number 21.