



west virginia department of environmental protection

Division of Waster and Water Management
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Austin Caperton, Cabinet Secretary
dep.wv.gov

February 14, 2020

Re: WV Permit No. WV0115924
Registration No. WVR104140
Beallair Homes, LLC (MVP)
Responsiveness Summary

Dear Citizen,

The State of West Virginia, Department of Environmental Protection (DEP), Division of Water and Waste Management (DWWM) would like to take this opportunity to thank those who submitted comments on the application from Beallair Homes, LLC. This Response to Public Comments highlights the issues and concerns that were identified through the comments received during the public notice period.

Beallair Homes proposes the reissuance of WVR104140 to continue coverage of construction activities associated with a Single Family Residential Community Subdivision and associated improvements in Jefferson County, WV. This permit registration was originally issued on 02/13/2009 and superseded GP Registration No. WVR101303. Reissuance #1 2013 was issued on 08/15/2013 for 46.9 acres. Under this reissuance an additional 1.6 acres will be added along the northeastern portion of the site for a stockpile area changing the total proposed disturbed area to 48.5 acres.

DWWM published a Class I legal advertisement (public notice for registration) in the Spirit of Jefferson Advocate in Charles Town, WV on March 13, 2019. This public notice allowed the DWWM to receive public comments on the proposed project. The public notice/public comment period closed on April 12, 2019.

Over the comment period 11 comments were received from 9 individuals. DWWM has reviewed and considered all comments received and is providing this document to respond to these comments prior to the reissuance of WVR104140.

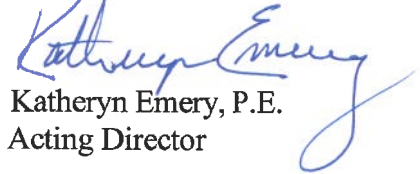
This permit registration will be reissued on February 14, 2020. Notice is hereby given of your right to appeal the terms and conditions of this permit registration of which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by

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such Board, in accordance with the provisions of Section 21, Article 11, Chapter 22 of the Code of West Virginia within thirty (30) days after reissuance of this permit registration.

Thank you for your interest on the Beallair Homes, LLC application. If you have any questions or concerns, please do not hesitate to please contact **Rick Adams** of my staff at (304) 926-0499 Ext. 437632 or by email at rick.d.adams@wv.gov.

Sincerely,



Katheryn Emery, P.E.
Acting Director

Comment 1: Comments were received relative to the sediment basins/ponds emitting odors, the presence of mosquitos, and Johnson grass growing in the pond, and a suspected animal carcass. An attached picture in one comment, dated March 24, 2109, shows one of the basins/ponds with brownish, sediment laden water.

RESPONSE 1: The sediment basin appears to be functioning properly. It provides the required storage capacity for the drainage acreage in order for sediment to settle out, preventing sediment laden discharge to state waters. The permittee (Beallair Homes) has requirements to perform inspections and provide maintenance to remove sediment when certain levels are reached within the basin. Inspectors from the WVDEP have visited the site and cited Beallair Homes for violations of their existing permit registration relative to inspections and maintenance, and their Stormwater Pollution Prevention Plan (SWPPP). Those inspections are public information, along with the current registration and pending application/registration, and may be found on the WVDEP website <https://dep.wv.gov>, using the Electronic Submission System in Public Query, with the registration number WVR104140.

Odors, mosquitos, and grass growing in the basins/ponds are naturally occurring phenomena, except in the case of a (suspected) animal carcass which is outside the scope of this permit.

Comment 2: Since this was once an apple orchard, and a study conducted by the Wormalds indicates there is a high level of arsenic in the soil, does this present a health hazard to residents when the pond is filled to the brim with water? What about rafters, swimmers, and hikers on the Shenandoah River where this water eventually empties?

RESPONSE 2: A study to assess arsenic concentrations was performed April 2007 and that report was provided by Wormald/Beallair Homes and is included in the application as public information. Recommendations relative to arsenic in soil are provided in that report. Much of the eastern panhandle of West Virginia is comprised of former orchards and possibly contains soil with arsenic content. The regulation of arsenic in soil is outside the scope of this permit.

Comment 3: I am a resident of the Community of Beallair in the historic Harpers Ferry District of Jefferson County. The West Virginia Department of Environmental records include several repeat violations on the current permit. On February 28, 2019 the West Virginia Department of Environmental Protection issued a Notice of Violation, WV 18-19-004-TAG 9 (attached), which is summarized as follows:

- Deficiencies noted on NOV W18-19-051-TAG have not been corrected.
- Permittee has failed to operate and maintain all systems of treatment and controls;
- Permittee has failed to maintain records that document inspections and maintenance of control devices.
- The inspector's photographs provide evidence of the lack of maintenance.

RESPONSE 3: The bulleted items in comment 3 are related to maintenance and inspection under the current permit/application and fall under the purview of WVDEP Environmental Enforcement. Environmental Enforcement has visited this project site several times in the last six months. Inspection records are public information and can be accessed as stated above. Environmental Enforcement in the Romney office may also offer further information.

Comment 4: The title page of the document states "THE COMMUNITY OF BEALLAIR, PHASES 2-5 NATIONAL STORMWATER POLLUTION PREVENTION PROGRAM"?

- Section 811.5 only references Phase 1 and Phase 2; the sign posted on site states Phases 1 and 2?

RESPONSE 4: Title Page Phase 2-5 versus (811.5) Phase I and Phase II on signs. The Phase I and Phase II referenced in section 811.5 of the SWPPP refers to the sequence or order of activities, and not the areas of Phase I and Phase II. The sign is appropriate for the current construction activities at the community of Beallair for Phase I and Phase II where construction is ongoing. All phases of this project, previously or currently, as a common plan of development, would be included in this application. The Stormwater Pollution Prevention Plan (SWPPP) has been retitled as Phase I-Phase II for consistency in submitted documents.

Comment 5: Section 811.6 Storm Water Management-- The Beallair Homes property, consisting of approximately 130.2338 acres, lies within the Shenandoah River Watershed. Stormwater runoff from this site will drain via open channels and overland flow or to a proposed enclosed storm drain system, then to an on-site storm water management facility.

- I talked with the Jefferson County engineer who oversees Beallair on Thursday February 28th and he has no idea what the SWPPP is referencing, "proposed enclosed storm drain system, then to an on-site storm water management facility".
- This appears to be an irrelevant and unsubstantiated information in the Beallair SWPPP???

RESPONSE 5: Section 811.6 "the proposed enclosed storm drain system, then to an on-site storm water management facility" is understood as stormwater runoff from remaining construction areas will drain via overland and sheet flow to ditches and channels to storm drains and piping that lead to sediment basins, which will later be converted to permanent storm water management ponds.

Comment 6: Inspections and Record Keeping are contradictory

- Section 801—Subsection I ----- INSPECTIONS AND RECORD KEEPING: Inspections are required at least seven (7) days and within 24 hours following a rainfall event of 1/2" or greater and shall continue until the site complies with the Final Stabilization section of this document.
 - Section 813---The following inspection and maintenance practices will be used to maintain erosion and sediment controls and stabilization measures. 1. All control

measures will be inspected at least once every four (4) calendar days and within 24 hours of any precipitation event greater than 1/4" / hour.

- How could a PE sign the certification on the SWPPP, if an unskilled individual can spot inconsistencies?

RESPONSE 6: Inspection and records are contradictory: One item in section 801-subsection was not corrected but has been updated to reconcile inspection frequencies to the new permit requirements and other already corrected sections of the SWPPP. Corrected records would be available on site and via the WVDEP website and public query.

Comment 7: The permit renewal on the WV DEP website includes the original GPP for Phases 1 and 2 dated March 17, 2006. The GPP from 13 years ago describes the Developers inspection frequency and documentation requirements. Section 4.11.g and 4.11.h appear to be applicable.

- The new WVDEP requirements are even more stringent.
- One of the above sections even requires a PE inspection. If they were complying with the referenced GPP would the current West Basin issues not be as severe?

RESPONSE 7: The Groundwater Protection Plan (GPP) from March 17, 2006, is applicable until the pending application is reissued. The current Groundwater Protection Plan (GPP) for this application, dated 3/04/19, is available on the WVDEP website. Inspections and maintenance included in the SWPPP and GPP are verified during environmental inspection by the WVDEP enforcement department. The West Sediment Basin is pertinent to the SWPPP and not the GPP.

Comment 8: Attached is the Application Certification dated 11/28/28 and it is signed and dated as a complete and official document under the penalties of Law. A review of the website indicates that revisions were submitted as late as 3/4/2019.

RESPONSE 8: The application certification date on the WVDEP website is 11/28/2018 and not 11/28/28. The certification date is from the original submittal date, but reviews and requested corrections, if applicable, begin after that date. The certification is that the document was prepared by qualified people/personnel. A re-signed/dated SWPPP is not required for every correction, but modifications and revisions to the SWPPP must be logged in the SWPPP and kept on the project site after the application is approved. A history of documents is found on the WVDEP website that follow this process.

In regard to comments from Michael Hamilton to Harold Ward dated July 31, 2019:

Comment 9: I just reviewed your website and there are still obvious errors in the noted permit renewal submission, and I am not familiar with environmental regulations and technical information. Just for starters the start date of January 2019 and the end date of December 2019 in Section 10 disagree with supporting information.

I brought WVR 104140 to the attention of Secretary Caperton on March 26th and many of the comments in that letter still apply. I have talked / emailed you, Mr. Patel, Mr. Wright, Ms. Anderson, and Mr. Parsons.

In reviewing the numerous permit resubmissions, I focus on one thing and that is the Professional Engineer certification. Prior to my retirement when I certified the accuracy of financial documents, I became financially liable for the documentation that I was certifying.

I fail to understand the inaccuracies in the current submission of a legal document. If a document is certified it is the responsibility of the PE to correct it. I believe in integrity and repeated erroneous submissions should be addressed as it is an insult to your organization and the people of West Virginia.

RESPONSE 9: WVR104140 reissuance application was reexamined and all comments and responses were considered. Some errors or deficiencies were noted during this review and additional technical corrections were requested and reviewed to ensure that this reissuance complies with the terms and conditions of General Permit WV0115924.

The General permit does not reference the responsibilities of the Professional Engineer. Per II.H. of General Permit WV0115924, The Stormwater Pollution Prevention Plans shall be prepared in accordance with good engineering practices.

Per Appendix A of the general permit WV0115924, applications, reports, or information submitted to the Director shall be signed and certified by an authorized representative as required in 47CSR10-4.6. (NPDES Program). The person signing the certification may be either a named individual or any individual occupying a named position.

In regard to comments from Michael Hamilton to Harold Ward dated September 27, 2019:

Comment 10: Over the last 7 months I have worked with Andy Parsons, Rick Adams, Tommy George, and Travis Hayes from your Permitting and Compliance Divisions regarding Beallair Homes, WVR104140. I admire their honesty and integrity. As a result of their dedication and perseverance, years of neglect of State and Federal regulations have been corrected.

Beallair Homes submitted a permit renewal in November, 2018 and remains under review. Last week I saw Rick Adams and Travis Hayes in the development and I asked them about the Project Engineer Certifications of the Permit and SWPPP. As of today, 9/27/2019 both documents remain inaccurate after multiple requests for correction by the Permitting Division and PE resubmissions.

- Permit Line 12 states “Home construction is on-going. Sediment Basin Conversion in Spring / Summer 2019.” This is inaccurate as the Developer has over 20 available lots and their historical build rate is less than 10 residences per year. Jefferson County Engineering has provided me with information that indicates that none of the Developer’s

\$2.4 million bond will be released until completion of Phase 1 and 2 (most likely 2021 or 2023).

- SWPPP –Best Practices
 - Section 817.6 Solid Waste states that a Covered Dumpster will be used and it will be emptied twice a week
 - Section 817.7 Sanitary Waste states that Portolets will be emptied a minimum of 3 times a week.

I am retired and have lived here since November 2015, and I have never seen a covered dumpster; dumpsters and Portolets are changed every 3 to 4 weeks. Of course you can accept these Best Practices and then issue a future Violation, but that requires the State to divert personnel from higher priority issues.

The numerous revisions, inconsistencies, and erroneous statements reflect on the professional integrity of PE who has signed the Legal Documents. I question whether these errors are a reflection how the PE views the authority of the WV DEP, or the hope that inconsistencies will go unchallenged. Ultimately acceptance of incorrect Permit documentation reflects on the integrity and competence of an organization

As a Taxpayer of WV, it is not acceptable for a Developer to repeatedly submit erroneous certified documents to a State Agency, as it results in the misuse of personnel and funds. Failure to address this situation is a reflection on the Authority of the WV State Government. The PE Certifications were signed multiple times and the engineer needs to understand that he is accountable to the State of West Virginia.

RESPONSE 10: We cannot deem a proposed schedule for completion in a SWPPP to be inaccurate due to the historical build rate on a site.

If Beallair Homes chooses to include strict frequencies for the cleaning of their covered dumpsters and portolets in the SWPPP, they may do so. If they choose to change those frequencies at a later date it would not constitute a major modification of the SWPPP and would simply involve on-site modification of the plan and notifying the Environmental Inspector.

Some errors or deficiencies were noted during this review. Additional technical corrections were requested and reviewed to ensure that this reissuance complies with the terms and conditions of General Permit WV0115924.

In regard to comments from Michael Hamilton to Brad Wright dated January 7, 2020:

Comment 11: The Permit Application (Nov 2018) addresses WVR 104140 Phases 1 and 2 and accompanying documentation and maps. In December 2019 Beallair Homes applied to Jefferson County for a Permit on Phase 3.

- Based on the Phase 3 Maps which I reviewed, Phase 3 will be located on top of the current concrete washout and water will flow into the current prime Stormwater basin which was not converted as indicated in the permit application.
- In addition to the permit inaccuracies which I had previously noted I have seen additional inaccuracies related to omissions which need to be addressed.

In Summary, the Permit Application is inaccurate and invalid, as it does not reflect the current project.

I feel your previous response was inadequate and non-responsive. On March 26, 2019, I requested Secretary Caperton to obtain resolution of these issues with Beallair Homes. The WV DEP needs to determine why there has been no resolution for over a year.

RESPONSE 11: Phase 3 is not part of the current plan. Before it can be incorporated into the plan a modification would have to be submitted and approved.

Some errors or deficiencies were noted and corrected during the review process after the public notice and comment period. Our permit reviewers have evaluated this application and determined it to be acceptable.