



west virginia department of environmental protection

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

Harold D. Ward, Cabinet Secretary  
dep.wv.gov

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

TO: Blue Racer Midstream, LLC  
ATTN: James Lenneman  
8701 Port Jackson Ave NW  
North Canton, OH 44720

DATE: November 6, 2025

ORDER NO.: 10406

**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 22-11-1 et seq. to Blue Racer Midstream, LLC.

**FINDINGS OF FACT**

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

1. Blue Racer Midstream, LLC is conducting land disturbance activity located in Tyler and Wetzel Counties, West Virginia. On March 6, 2025, Blue Racer Midstream, LLC was issued Water Pollution Control Permit No. WV0116815, Registration No. WVR312395, for Stormwater Associated With Oil and Gas Related Construction Activities.
2. On May 29, 2025, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the permit and Legislative Rules were observed and documented:
  - a. Section G.4.e.2.C.i. - Blue Racer Midstream, LLC failed to properly dispose of all solid waste/demolition material. Wood chips were blown into the intermittent stream of the Unnamed Tributary (UNT) of Stackpole Run.

Promoting a healthy environment.

- b. Section G.4.e.2.A.ii.j. - Blue Racer Midstream, LLC failed to prevent sediment-laden water from leaving the site without going through an appropriate device. Numerous perimeter controls and outlet treatment for waterbars located between Station Marker 37+00 and 46+00 were not in place as designated in the Stormwater Pollution Prevention Plan (SWPPP). In addition, the temporary stream crossing near Station Marker 46+00 lacked geotextile. Due to these deficiencies, sediment and sediment-laden water were leaving the site without treatment.
- c. Section G.4.e.2. - Blue Racer Midstream, LLC failed to implement controls appropriate for the project. Specifically, the temporary stream crossing near Station Marker 46+00 lacked geotextile.
- d. Section G.4.e.1.D. - Blue Racer Midstream, LLC failed to provide an adequate stone access entrance/exit to reduce the tracking of sediment onto public or private roads. The construction entrance located near Station Marker 31+00, TAR-3's construction entrance, and TAR-2 were not stabilized.
- e. Section G.4.c. - Blue Racer Midstream, LLC failed to modify the SWPPP when there was a change in design, construction, scope of operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the State. Specifically, Blue Racer Midstream, LLC failed to modify the SWPPP to include an access road and a laydown yard.
- f. Section G.4. - Blue Racer Midstream, LLC failed to comply with the approved SWPPP. Contrary to the approved SWPPP, required stabilization measures, timber mats, a temporary bridge, waterbars, outlet protection, and perimeter controls were not in place in multiple areas of the project.
- g. Section G.4.e.2.D.i. - Blue Racer Midstream, LLC failed to inspect and clean all adjacent public and private roads of debris originating from the construction site. Sediment was being tracked from TAR-2 onto the public roadway of Left Hand Fork (CR 13/8).
- h. Title 47, Series 2, Section 3.2.b.- Blue Racer Midstream, LLC caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the UNT of Stackpole Run (39° 28'07" N, -80° 41'49" W) and wood chip deposits on the bottom of the UNT of Stackpole Run (39° 28'10" N, -80° 41'51" W).

As a result of the aforementioned violations, Notice of Violation (NOV) No. W25-48-057-TGW was issued to Blue Racer Midstream, LLC.

- 3. On August 13, 2025, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the permit and Legislative Rules were observed and documented:
  - a. Section B. - Blue Racer Midstream, LLC failed to comply with the approved SWPPP. Contrary to the approved SWPPP, required water bars, belted silt retention fence, and silt fence had not been installed in multiple areas of the project.
  - b. Section G.4.c. - Blue Racer Midstream, LLC failed to modify the SWPPP when there was a change in design, construction, scope of operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the

- State. Specifically, Blue Racer Midstream, LLC failed to modify the SWPPP to include an access road.
- c. Section G.4.e.2.A.ii.j. - Blue Racer Midstream, LLC failed to prevent sediment-laden water from leaving the site without going through an appropriate device. The timber mat bridge and numerous waterbars, water bar outlet treatments, and perimeter controls throughout the site were in need of maintenance, allowing sediment and sediment laden water to discharge off the permitted Limits of Disturbance (LOD) at multiple locations.
  - d. Section D.1. - Blue Racer Midstream, LLC failed to properly operate and maintain all systems of treatment and controls. An access road, a timber mat bridge, and numerous waterbars, water bar outlet treatments, and perimeter controls throughout the site were in need of maintenance.
  - e. Section G.4.e.2. - Blue Racer Midstream, LLC failed to properly implement controls. Between Station Markers 5+00 and 20+00, numerous perimeter controls were not extended far enough to capture sediment laden water or were not properly trenched-in. Several waterbars installed between Station Markers 21+00 and 30+00 were not extended far enough to discharge treated stormwater off the permitted LOD.
  - f. Title 47, Series 2, Section 3.2.a.- Blue Racer Midstream, LLC caused conditions not allowable in waters of the State by creating distinctly visible settleable solids in the Wetland UNT of the Lefthand Fork of Stackpole Run (39° 27'56" N, -80° 41'24" W) and in the UNT of Stackpole Run (39° 28'06" N, -80° 41'47" W).
  - g. Title 47, Series 2, Section 3.2.b.- Blue Racer Midstream, LLC caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the Wetland UNT of the Lefthand Fork of Stackpole Run (39° 27'58" N, -80° 41'23" W), on the bottom of the UNT of Stackpole Run (39° 28'06" N, -80° 41'47" W), and on the bottom of the UNT of Stackpole Run (39° 28'09" N, -80° 41'51" W).

As a result of the aforementioned violations, NOV No. W25-48-077-TGW was issued to Blue Racer Midstream, LLC.

- 4. On September 11, 2025, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the permit was observed and documented:
  - a. Section G.4.c. - Blue Racer Midstream, LLC failed to modify the SWPPP when there was a change in design, construction, scope of operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the State. Specifically, Blue Racer Midstream, LLC failed to modify the SWPPP to include an access road.

As a result of the aforementioned violation, NOV No. W25-48-093-TGW was issued to Blue Racer Midstream, LLC.

### **ORDER FOR COMPLIANCE**

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

1. Blue Racer Midstream, LLC shall immediately take all measures to initiate compliance with all terms and conditions of its permit and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, Blue Racer Midstream, LLC shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Blue Racer Midstream, LLC will achieve compliance with all terms and conditions of its permit and pertinent laws and rules. The plan of corrective action shall include, but not be limited to, provisions for proper remediation of all areas identified in this Order where conditions not allowable were observed and documented in waters of the State, as defined in WV Legislative Rule 47CSR2 Section 3.2. In addition, the plan of corrective action shall include, but not be limited to, provisions for submittal of a report which documents that proper remediation of the aforementioned areas has occurred. The plan of corrective action shall make reference to Permit No. WV0116815, Registration No. WVR312395. The plan of corrective action shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> 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 Blue Racer Midstream, LLC's violations, Blue Racer Midstream, LLC shall be assessed a civil administrative penalty of thirty-one thousand one hundred sixty dollars (\$31,160) 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. Blue Racer Midstream, LLC hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21. Under this Order, Blue Racer Midstream, LLC 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, Blue Racer Midstream, LLC 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 Blue Racer Midstream, LLC 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, Blue Racer Midstream, LLC 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 Blue Racer Midstream, LLC becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Blue Racer Midstream, LLC 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 Blue Racer Midstream, LLC 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 Blue Racer Midstream, LLC (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 Blue Racer Midstream, LLC 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 Blue Racer Midstream, LLC 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 Blue Racer Midstream, LLC, its successors and assigns.

7. This Order shall terminate upon Blue Racer Midstream, LLC’s notification of full compliance with the “Order for Compliance” and verification of this notification by WVDEP.

DocuSigned by:  
  
8F88F74E95F5482...  
 Jack Walsh  
Blue Racer Midstream, LLC

11/25/2025 | 7:03 AM PST

Date

Public Notice begin:

Date

Public Notice end:

Date

\_\_\_\_\_  
Jeremy W. Bandy, Director  
Division of Water and Waste Management

\_\_\_\_\_  
Date





Sediment deposits in the UNT of Stackpole, causing Conditions Not Allowable (CNA) ( $39^{\circ} 28'07''$  N,  $-80^{\circ} 41'49''$  W), due to failure to install perimeter controls and outlet treatment between Station Markers 37+00 and 46+00.



Wood chips blown into the streamway of the UNT of Stackpole Run, causing CNA ( $39^{\circ} 28'10''$  N,  $-80^{\circ} 41'51''$  W).





Sediment laden water discharged into the Wetland UNT of Lefthand Fork of Stackpole Run, causing CNA (39° 27'56" N, -80° 41'24" W).



Sediment deposits in the Wetland UNT of the Lefthand Fork of Stackpole Run, causing CNA (39° 27'58" N, -80° 41'23" W).





CNA within the ephemeral streamway of the UNT of Stackpole Run, as both a visible plume (Red Arrow) and sediment deposits (Black Arrow).



CNA within the affected streamway.





Sediment deposits in the bottom of the intermittent stream, causing CNA (39° 28'09" N, -80° 41'51" W).



The affected streamway.



BLUE RACER MIDSTREAM, LLC, WVR312395, BFT to Hoge Pipeline



An access road that traverses to Station Marker 31+00 and TAR-3 and is not part of the approved SWPPP.



An access road that traverses to Station Marker 31+00 and TAR-3 and is not part of the approved SWPPP.

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:** Blue Racer Midstream, LLC **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#												
			2c, 3e	2d	2e, 3b, 4a	2f, 3a	2g	2h, 3f, 3g	3d						
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1						
b)	Toxicity of Pollutant	0 to 3	1	1	0	1	1	1	1						
c)	Sensitivity of the Environment	0 to 3	1	1	0	1	1	1	1						
d)	Length of Time	1 to 3	2	1	3	2	1	1	1						
e)	Actual Exposure and Effects thereon	0 to 3	1	1	0	1	1	1	1						
	<b>Average Potential for Harm Factor</b>		1.2	1	0.8	1.2	1	1	1	No	No	No	No	No	No
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>													
	Degree of Non-Compliance	1 to 3	3	3	3	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.



**Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.**

[illegible]

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
<b>Potential for Harm to Human Health or the Environment</b>	<b>Major</b>	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	<b>Moderate</b>	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	<b>Minor</b>	\$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
2c, 3e	Moderate	Major	\$4,200	1	\$4,200
2d	Minor	Major	\$2,000	1	\$2,000
2e, 3b, 4a	Minor	Major	\$1,900	1	\$1,900
2f, 3a	Moderate	Major	\$4,200	1	\$4,200
2g	Minor	Major	\$2,000	1	\$2,000
2h, 3f, 3g	Minor	Major	\$2,000	6	\$12,000
3d	Minor	Major	\$2,000	1	\$2,000
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
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
<b>Total Base Penalty</b>					<b>\$28,300</b>

## **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 employs 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		\$2,830
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			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$2,860</b>
<b>Penalty =</b>			<b>\$31,160</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> Economic benefit not warranted.	