



west virginia department of environmental protection

Division of Water and Waste Management
601 57th 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, GROUNDWATER PROTECTION, AND SOLID
WASTE MANAGEMENT ACTS
WEST VIRGINIA CODE CHAPTER 22, ARTICLES 11, 12, AND 15**

TO: Gantt's Excavating and Contracting, Inc.
Timothy W. Smith
P.O. Box 974
Martinsburg, WV 25402

DATE: February 18, 2025

ORDER NO.: MM-25-05

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 22-11-1 et seq., 22-12-1 et seq., and 22-15-1 et seq. to Gantt's Excavating and Contracting, Inc (hereinafter "Gantt's").

FINDINGS OF FACT

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

Shale Pit

1. Gantt's operates a shale pit located near Hedgesville, Berkeley County, West Virginia. WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG612088, was transferred to Gantt's on October 28, 2022.
2. On July 14, 2023, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia State Code, West Virginia Legislative Rules, and the WV/NPDES permit were observed and documented:

- a. Appendix A.I.8 – Gantt’s failed to supply information related to the Stormwater Pollution Prevention Plan (SWPPP) (training and inspections) and supporting documentation for sampling/analysis (chain of custody forms and lab results) upon WVDEP’s request.
- b. Section B.17 – Gantt’s failed to implement the SWPPP by failing to install controls and implement stabilization measures as outlined in the Sediment and Erosion Control Plan. There were erosion channels with no controls in place.
- c. 33CSR1 Section 7.1.a and 22-15-10(a) – Gantt’s created an open dump of construction material and other miscellaneous solid waste.

As a result of the aforementioned violations, Notice of Violation (NOV) No. w23-02-048-mkk was issued to Gantt.

3. On July 31, 2024, and August 9, 2024, WVDEP personnel conducted inspections of the facility. During the inspections, violations of the following sections of West Virginia Legislative Rules and the WV/NPDES permit were observed and documented:
 - a. Section B.17 – Gantt’s failed to properly develop, maintain, and implement the SWPPP. Specifically:
 - i. Page 1 Line 1 of the SWPPP provides a description of potential pollutant sources and states only that non-classified minerals or other materials (shale) are removed without further processing for the purpose of potential future development. However, dump trucks were dumping concrete with rebar within the boundaries of the shale pit, which is not an activity or a potential pollutant source described in the SWPPP.
 - ii. Page 2 Line 5 of the SWPPP provides a description of steps taken to prevent stormwater contamination and states that “any fuel or oil leaks will be remediated and removed from site following proper procedure.” Furthermore, Page 4 Line 5 of the SWPPP states that “any spills are to be cleaned up immediately...Absorbent pads are to be used to clean up any oil spills or leaks.” However, petroleum stains were observed under several pieces of equipment.
 - iii. Page 3 of 4 of the Sediment and Erosion Control Plan required by Section B.17.A.2.a.6 showed controls that were to be installed but were not in place. Stabilization measures were not initiated in a portion of the site where construction activity had ceased. There were significant erosion rills on the south side of the facility.
 - iv. Sheet 2 of 4 of the Sediment and Erosion Control Plan required by Section B.17.A.2.a.6 shows an unpermitted outlet from a sediment pond at the southwest side of the property. The unmarked basin was not listed as a sampling point.
 - v. Sheet 1 of 4 of the Sediment and Erosion Control Plan required by Section B.17.A.2.a.6 shows a 3.8617-acre lot on the northern part of the property as being part of the shale pit. Outlet No. 001 is depicted as being on this lot. However, there was a Dollar General Store located on this lot, and Outlet No. 001 was moved to a stormwater pond on the Hedgesville Post Office Parcel. Gantt’s, therefore, failed to maintain current information in the SWPPP.

- b. Section B.6 - Gantt's had not updated/modified the SWPPP in response to benchmark exceedances of Iron and Total Suspended Solids which occurred during the four (4) most recent sampling periods (Table One).
- c. Appendix A.I.12 and 47CSR2 Section 3.2.a - Gantt's caused conditions not allowable by creating distinctly visible solids in waters of the State. Specifically, turbid water discharging from Outlet No. 004 entered the receiving stream.
- d. Appendix A.IV.2 – Gantt's failed to immediately report noncompliance which may have endangered health or the environment and failed to provide a written submission within five (5) days after becoming aware of the circumstances. Specifically, Gantt's failed to report the aforementioned spill into waters of the State and failed to submit a five (5)-day follow-up report.

As a result of the aforementioned violations, NOV No. w24-02-040-mkk was issued to Gantt's.

Shop Facility

4. Gantt's operates a shale pit located near Martinsburg, Berkeley County, West Virginia. Gantt's was issued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG612790, on December 27, 2023.
5. On October 31, 2023, WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel noted petroleum spillage under equipment throughout the property. In addition, WVDEP personnel noted that Gantt's had not applied for coverage under the WV/NPDES Multi-Sector General Water Pollution Control Permit, and the previous coverage under WV/NPDES Permit No. WV0111457, Registration No. WVG611513, had expired on April 12, 2020.
6. On February 5, 2024, WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel noted that Gantt's hired an environmental consultant to remediate petroleum spillage at the facility; however, the remediation had been delayed, and contaminated soil remained at the site.
7. On April 30, 2024, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia Legislative Rules and the WV/NPDES permit were observed and documented:
 - a. 47CSR58 Section 7.1 – Gantt's allowed petroleum and/or a chemical mixture to flow onto or under the ground surface in a manner which could impact groundwater. Specifically, a spill at the dozer was excavated and placed into the bucket of another loader. Proper remediation of the area had not taken place, and the loader was continuing to leak onto the ground.
 - b. Section B.17.A.2.a.4 – Gantt's failed to implement the SWPPP by failing to ensure good housekeeping. Specifically, Gantt's failed to implement measures to prevent equipment from leaking onto the ground.

As a result of the aforementioned violations, NOV No. w24-02-034-mkk was issued to Gantt's.

8. On October 2, 2024, WVDEP personnel received a Remedial Excavation, Sampling, and Testing Report from Gantt's. The report had multiple discrepancies/errors and did not fully address potentially contaminated areas at the site.

General Information

9. On January 16, 2025, WVDEP personnel and representatives of Gantt's met to discuss the terms and conditions of this Order.

ORDER FOR COMPLIANCE

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

1. Gantt's shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permits and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, Gantt's shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Gantt's will achieve compliance with all terms and conditions of its WV/NPDES permits and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0111457, Registration Nos. WVG612088 and WVG612790, and Order No. MM-25-05. The plan of corrective action 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 Gantt's violations, Gantt's shall be assessed a civil administrative penalty of ten thousand twenty dollars (\$10,020) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule: One thousand six hundred seventy dollars (\$1,670) shall be submitted within thirty (30) days after the effective date of this Order and by the first day of each month thereafter for the next five (5) months. 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. Gantt's hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21, 22-12-11, and 22-15-16. Under this Order, Gantt's 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, Gantt's 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 Gantt's 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, Gantt's 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 Gantt's becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Gantt's 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 Gantt's 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 Gantt's (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 Gantt's 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 Gantt's 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 Gantt's, its successors and assigns.
7. This Order shall terminate upon Gantt's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Timothy W. Smith
Gantt's Excavating and Contracting, Inc

2/24/2025

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

Benchmark Exceedance Summary

Responsible Party: GANTT'S EXCAVATING AND CONTRACTING, INC.

WVG6122088 - Shale Pit

Outlet	Parameter	Units	Benchmark Cut-off	Reported Result 6/24	Reported Result 3/24	Reported Result 12/23	Reported Result 9/23	Average of 4 Samples
004	TSS	mg/l	100	40.8	27.1	314	750	283.0
004	Iron, Total Recoverable	mg/l	1.5	1.57	0.77	34.5	63300	15834.2
003	TSS	mg/l	100	26.8	4.9	391	169	147.9
003	Iron, Total Recoverable	mg/l	1.5	0.94	0.47	13	6160	1543.6

August 9, 2024 - Shale Pit



Sediment pond for Outlet No. 004



Outlet No. 004 discharging solids into receiving stream.



Solids from Outlet 004 comingling with clear stream water



Downstream of outlet 004.

July 31, 2024 - Shale Pit



Erosion on south side of facility



Solids in pond on the southwest side of the property

Gantt's Excavating and Contracting, Inc.



Petroleum staining under dozer



Petroleum staining on ground

Gantt's Excavating and Contracting, Inc.



Dumping concrete with rebar



Concrete with rebar

July 14, 2023 - Shale Pit



Muddy water with staining over the bank and outlet pipe.



Solid waste

Gantt's Excavating and Contracting, Inc.



Erosion channel with no E&S controls



North section of the shale pit

Gantt's Excavating and Contracting, Inc.

October 31, 2023 - Shop



Petroleum on ground from equipment



Petroleum on ground from dozer

Gantt's Excavating and Contracting, Inc.

February 5, 2024 - Shop



Large petroleum spill remains under dozer.

Gantt's Excavating and Contracting, Inc.

April 30, 2024 - Shop



Petroleum staining on ground



Petroleum staining under truck

Gantt's Excavating and Contracting, Inc.



Large petroleum stain



Petroleum stain along building

Gantt's Excavating and Contracting, Inc.



Petroleum staining under dozer

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Gantt's Excavating and Contracting, 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/3a	3b	3c	3d	7b								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	0	1	0	1	0	1								
c)	Sensitivity of the Environment	0 to 3	0	1	0	1	0	1								
d)	Length of Time	1 to 3	1	1	1	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	0	1	0	1	0	1								
Average Potential for Harm Factor			0.4	1	0.4	1	0.4	1	No	No	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 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.

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		\$1,110
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	(\$1,110)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,110)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$1,080)
Penalty =			\$10,020

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: Economic benefit not warranted.	