



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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Harold D. Ward, Cabinet Secretary
dep.wv.gov

**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: Ewusiak Development, LLC and/or
Go Green America Recycling, LLC
Attn: Scotty Ewusiak
1400 Main St.
Follansbee, WV 26037

DATE: August 28, 2025

ORDER NO.: MM-26-06

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 Ewusiak Development, LLC and/or Go Green America Recycling, LLC (hereinafter “Ewusiak Development LLC”).

FINDINGS OF FACT

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

1. Ewusiak Development, LLC is conducting land disturbance activity in Brooke County, West Virginia.
2. On July 2, 2025, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility in response to a complaint. During the inspection, WVDEP personnel noted that no erosion and sediment controls were installed at the site, and equipment had been crossing the stream with no Best Management Practices (BMPs) in place. In addition, violations of the following sections of WV State Code and Legislative Rules were observed and documented:

- a. 22-11-8(b)(1) - Ewusiak Development, LLC discharged pollutants from a land disturbance of approximately 7.1 acres into waters of the State (i.e. Mahan Run at or near N 40° 20.5392', W 80° 35.6935' and the UNT of Mahan Run at or near 40.343044, -80.595879) without an authorized WV/NPDES permit.
- b. Title 47, Series 2, Section 3.2.b. - Ewusiak Development, LLC caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of Mahan Run at or near N 40° 20.5392', W 80° 35.6935' and the UNT of Mahan Run at or near 40.343044, -80.595879.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W25-05-035-MJS was issued to Ewusiak Development, LLC.

3. On July 16, 2025, WVDEP personnel conducted an inspection of the facility in response to a complaint. During the inspection, WVDEP personnel noted that the site lacked erosion and sediment controls. In addition, violations of the following sections of WV State Code and Legislative Rules were observed and documented:

- a. 22-11-8(b)(1) - Ewusiak Development, LLC discharged pollutants from a land disturbance into waters of the State (i.e. Mahan Run and the UNT of Mahan Run) without an authorized WV/NPDES permit.
- b. Title 47, Series 2, Section 3.2.b. - Ewusiak Development, LLC caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of Mahan Run at or near N 40° 20.5392', W 80° 35.6935' and in the UNT of Mahan Run at or near N 40° 20.5848', W 80° 35.7501'; at or near N 40° 20.5686', W 80° 35.7457'; and at or near N 40° 20.5518', W 80° 35.7354'.

As a result of the aforementioned violations, NOV No. W25-05-037-MJS was issued to Ewusiak Development, LLC.

4. On August 13, 2025, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and Legislative Rules. were observed and documented:

- a. 22-11-8(b)(1) - Ewusiak Development, LLC discharged pollutants from a land disturbance into waters of the State (i.e. Mahan Run and the UNT of Mahan Run) without an authorized WV/NPDES permit.
- b. 22-15-10(e) - Ewusiak Development, LLC created an open dump consisting of building materials and other trash that was being buried with fill material.
- c. Title 47, Series 2, Section 3.2.b. - Ewusiak Development, LLC caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of Mahan Run at or near N 40° 20.5392', W 80° 35.6935' and in the UNT of Mahan Run at or near N40° 20.6255', W80° 35.7453'; and at or near N40° 20.6166', W80° 35.7455' spanning a distance of 400' to a point at or near N40° 20.5509', W80° 35.7524'.
- d. Title 47, Series, 58, Section 7.1 - Ewusiak Development, LLC deliberately allowed a chemical mixture to flow onto or under the land surface in such a manner that could impact groundwater quality. A petrochemical spill was observed on the ground at the onsite fueling tank at or near N40° 20.5539', W80°

35.6504' and at a mini excavator located at or near N40° 20.5697', W80° 35.7233.'

As a result of the aforementioned violations, NOV No. W25-05-039-MJS was issued to Ewusiak Development, LLC.

5. On August 14, 2025, an application for WV/NPDES permit coverage was submitted for the aforementioned site and was assigned WV/NPDES Permit No. WV0115924, Registration No. WVR113116. WVDEP personnel subsequently requested corrections to the WV/NPDES permit application. As of August 26, 2025, the requested corrections had not been submitted, and the WV/NPDES permit had not been issued, meaning there was no active WV/NPDES permit coverage for regulated activity occurring at the site.

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. Ewusiak Development LLC shall immediately take all measures to initiate compliance with all terms and conditions of pertinent laws and rules.
2. Because of Ewusiak Development LLC's violations, Ewusiak Development LLC shall be assessed a civil administrative penalty of nineteen thousand two hundred forty dollars (\$19,240) 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. Ewusiak Development LLC 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, Ewusiak Development 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, Ewusiak Development 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 Ewusiak Development 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, Ewusiak Development 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 Ewusiak Development LLC becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Ewusiak Development 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 Ewusiak Development 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 Ewusiak Development 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 Ewusiak Development 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 Ewusiak Development 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 Ewusiak Development LLC, its successors and assigns.

7. This Order shall terminate upon Ewusiak Development LLC's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Scotty Ewusiak

Scotty Ewusiak
Ewusiak Development, LLC and/or
Go Green America Recycling, LLC

10-14-25

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date



Photo # DSCF5092: Sediment deposits in UNT Mahan Run at or near 40.343044, -80.595879



Photo # DSCF5058: Sediment placed in Mahan run at or near N 40° 20.5392', W 80° 35.6935' for a stream crossing (downstream view)



Photo # DSCF5063: Site overview



Photo # DSCF5060: No E&S controls installed



Photo # DSCF5357: Fill, culvert crossing, and sediment deposits in Mahan Run at or near N 40° 20.5392', W 80° 35.6935'.



Photo # DSCF5367: Looking upstream of N 40° 20.5848', W 80° 35.7501' along UNT Mahan Run (stream labeled by arrows) with sediment deposits and no E&S controls.



Photo # DSCF5386: Sediment deposits in UNT Mahan Run at or near N 40° 20.5518', W 80° 35.7354'.



Photo # DSCF5366: Sediment deposits from equipment crossing in UNT Mahan Run at or near N 40° 20.5848', W 80° 35.7501'.



Photo # DSCF5380: Sediment deposits in UNT Mahan Run at or near N 40° 20.5686', W 80° 35.7457'



Photo # DSCF5387: Sediment deposits in UT Mahan Run downstream of N 40° 20.5518', W 80° 35.7354'.



Photo # DSCF5383: Sediment deposits in UNT Mahan Run at or near N 40° 20.5518', W 80° 35.7354'.



Photo # DSCF5391: Site overview



Photo # DSCF6154: Fill and culvert crossing at or near N 40° 20.5392', W 80° 35.6935' creating conditions not allowable in Mahan Run.



Photo # DSCF6156: Fill and culvert crossing at or near N 40° 20.5392', W 80° 35.6935' creating conditions not allowable in Mahan Run.



Photo # DSCF6180: Sediment deposits in UNT Mahan Run at or near N40° 20.6255', W80° 35.7453'



Photo # DSCF6177: Red arrow showing location of culvert inlet for UNT Mahan Run at or near N40° 20.6166', W80° 35.7455'. Blue line is approximate 400' path of culvert under fill material



Photo # DSCF6185: Sediment deposits in UNT Mahan Run at or near N40° 20.6255', W80° 35.7453'. Red arrow shows culvert inlet and fill material at or near N40° 20.6166', W80° 35.7455'.



Photo # DSCF6238: Culvert outlet of UNT Mahan Run at or near N40° 20.5509', W80° 35.7524' with sediment deposits downstream of the culvert

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Ewusiak Development 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#											
			2a, 3a, 4a	2b	3b	4c								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	1	1	1								
c)	Sensitivity of the Environment	0 to 3	1	1	1	1								
d)	Length of Time	1 to 3	3	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1								
	Average Potential for Harm Factor		1.4	1	1	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								

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]

[illegible]

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		\$1,640
6.2.b.4 - Compliance/noncompliance history -			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,170		\$1,170
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
Penalty Adjustments			\$2,840
Penalty =			\$19,240

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	\$1,170
Competitive Advantage	
Estimated Economic Benefit	\$1,170
Comments: Avoided cost of WV/NPDES permit application fee.	