

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA**

David C. Tabb,

Appellant,

v.

Appeal No.



Harold Ward, Deputy Secretary for Operations,
Division of Water and Waste Management
Department of Environmental Protection, and

Jefferson County Development Authority, and

TeMa USA, LLC.,
Appellees.

RULE 11 CERTIFICATION

I, Christian J. Riddell, do swear that I have reviewed the filing and information contained herein and, based on my review, believe that the appeal attached hereto is in compliance with Rule 11 of the West Virginia Rules of Civil Procedure.

Christian J. Riddell, Esq. State Bar#12202
Stedman & Riddell
329 S. Queen Street Martinsburg, WV 25401
(304) 267-3949

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
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NOTICE OF APPEAL

Action Complained Of: The Appellant named above respectfully represent(s) that he is aggrieved by the issuance of a storm water permit dated October 12, 2018; Revised February 4, 2019; Issued March 29, 2019.

Relief Requested: The Appellant therefore prays that this matter be reviewed and that the Board grant the following relief to wit: vacating and holding for naught the permit issued (#WVG611874) on March 29, 2019.

Specific Objections: The specific objections to the action, including both questions of fact and law to be determined by the Board, are set forth in detail in separate numbered paragraphs and attached hereto.

Dated this 29 day of April, 20 19.

A handwritten signature in blue ink, appearing to read "David C. Tabb".

(Signature)

107 TABB RD

(Address)

Harpers Ferry WV 25425

304 676 5976

(Telephone)

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
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Appeal No. 19-08-EQB

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SPECIFIC OBJECTIONS AND RELIEF REQUESTED

Now comes Appellant, David Tabb, and files his *Notice of Appeal* on Jefferson County Development Authority/TeMa USA, LLC., (Permit # WVG611874) issued date March 29, 2019.

Appellant makes the following specific objections pursuant to WV CSR §46-4-2(c).

Specific Objection:

1. This project as founded by the Jefferson County Development Authority has not followed any of the required studies or procedures to fund or build this facility.
2. Building permit issued March 23, 2018, expired September 23, 2018 is further marked whether it is a floodplain with no documentation to substantiate their marking of the permit and further indicates no certification of their water or sewer source.
3. The sixty plus tons of particulate matter projected to come from the TeMa facility will eventually go into the KARST topography water reserve and further effect the Elk Run/Chesapeake Bay Watershed. One hundred percent of residents/businesses receive their water from wells. Even the public water system is from a well on the Burr Business Park site.
4. The permit is now under appeal because of the best available control technology (BACT) has not been applied. (Permit # WVG611874).

5. There has been no study of what the effect the building of this facility would be and/or how it will affect the ground water. The ground water level is less than 5 feet of any run off that will end up in the ground.
6. It is my understanding that three extrusion lines equipped with electrical resistance heat, that can reach a melting temperature of about 480° Fahrenheit, will be operating in this facility and that the product will be water cooled on rollers. The unanswered and disturbing question is where is all this extremely hot water going? Is this a part of the storm water permit request or part of a sewer request? I am not able to locate how and where the water is going to go within the permitting.
7. My concerns even though this is for a different project, the TeMa facility is adjacent to the Ranson Route 9 Infrastructure Project and will share the same utilities. I have not found where the permit has addressed the Endangered Species Act. Non-analyzation of any project could affect downstream/underground species of fish and wildlife. If this study was required for the Route 9 project, then where is the study for the TeMa project?
8. I believe a study is required for Permit #WVG611874, to be submitted to the US Fish and Wildlife Service before application of permit; due to the following:
 - (a) The Endangered Species: It appears the Staff was not aware of the Madison Cave Isopods. Even though, I wrote a letter to you on December 12, 2018, to inform that this stormwater permit is required for review for Endangered Species. Was this letter or the notice of such requirement posted to the Staff and the DEP? If not, why not? Dennis O. Stottlemeyer seemed to be very interested, even to the point of calling me to learn more. I would appreciate if you would contact Mr. Stottlemeyer. His phone number is (304) 926-0441.
 - (b) The Applicant for the Permit is the Jefferson County Development Authority (JCDA). The JCDA is not in compliance to operate since eleven (11) voting board members resigned and the remaining board members may be removed. The Jefferson County Commission (JCC) has yet to make any decisions on how to move forward, whether the JCDA will even continue to exist. I believe since this is a non-operational board to approve or make any request or decisions, the application should be put on hold until the JCC makes a decision on the fate of the applicant, the JCDA. I believe it would be inappropriate to approve a permit to any entity that cannot receive and act upon the application. Furthermore, the acting director, Nick Diehl of the JCDA, resigned in April of 2019.
 - (c) Sink holes, Wet lands and Hot water: All three of these subjects have yet to be addressed. All three are required to be addressed by the Endangered Species Act. Once the staff addresses these issues, does this require another public hearing? I believe that

under the Endangered Species Act the applicant was required to submit and/or comply before submitting an application. Since the JCDA cannot respond or make any decisions or requests, I believe this permit needs to be put on hold or denied.

9. This permit was re-written on February 4, 2019. This was after the public hearing on January 30, 2019. I am requesting another public hearing since this re-write has not published.

According to the document *Permit Hearing and Appeals Guide* prepared By The West Virginia Department of Environmental Protection and Office of Environmental Advocate, (page 2) "... *When an individual or business submits a completed permit application form, a DEP permit team reviews the document to ensure all the necessary questions have been answered. After a preliminary determination has been made that the permit application is administratively complete, the DEP will assign a permit application number for the draft permit, and the DEP or the company will provide notice to the public that the permit is available for a 30-day review and comment period. The review and comment period may vary, depending on the type of permit. A public notice will be published in the legal advertisement section of a local newspaper...*". Petitioner believes the above language proffered by the Department of Environmental Protection, is to ensure that the public actively participates.

10. I am requesting any and all violations within the stormwater permit enforcement to include notice of violations to the U.S. Department of Interior/Fish and Wildlife Enforcement Division.
11. This is a stormwater permit, so it is imperative to know what the groundwater depth and conditions are. Without knowing what water is there how can one calculate the possibility of run off? On this site groundwater depth is less than five (5) feet with standing water on three (3) sides of the facility some 500 feet or less away. This needs further study and information.
12. This section also lists Norton Investment, LLC., as the only facility near this project, although there is a business across the street due north with only the street itself separating the two businesses.
13. Outlet 001 is on the west side, drainage is to the west, the Burr Industrial Park Storm Water System is to the east. How is 001 outlet going to go up hill to the east? Even the previous permit request stated this water is going west, to the WVDOT Wiltshire Road drainage system. The 4.1 paragraph lists this project as the Burr Business Park, now it is listed as the Burr Industrial Park. The question is; does anyone know where this project is?
14. There are two large fans with stacks outside the building and a large air compressor system with temporary storage in the parking lot. The storm water permit has not addressed the particulate matter and or the discharge from the stacks and or compressor.

15. It's clear there is a risk of floatable plastic pellets and zinc. Both are dangerous to the waterways, above and/or in below ground yet there is no drainage trap system projected to collect these pellets or zinc. There is no mention of the 60 plus tons of particulate matter that will come out of the two stacks. When and who will monitor the grass for pollution? Who and how will it be cleaned up? The original air quality permit does not mention the release of zinc from the facility, so how is zinc just appearing on the site?
16. Again Mr. Ciotti doesn't know what lots they are on, which way the drainage goes, what is coming or how much out of two discharge stacks. What is the name of the site and who is the applicant or where is the sanitary waste is going? Mr. Ciotti should go across the street and check on his neighbor to see if they like what's going on.
17. All outlets need monitoring after every rain event of a ½ inch of rain/precipitation or more by a third party. Is the DEP going to ignore the benchmark parameters of this project Industrial activities?
18. All compressors have some type of lubrication and/or discharge. This discharge should go into the sanitary waste system with a grease trap prior to discharge and weekly inspections.
19. Petitioner notes that there were three (3) comments/objections between the date of the open meeting of January 30, 2019 and date of the issuance of the revised permit, neither of which were responded to in writing by the Water and Waste Management Division; which leads Petitioner to conclude that the revised permit, which has been approved and gone into effect failed to considered any of the objections or comments. That contradicts the *Permit Hearing and Appeals Guide* prepared By The West Virginia Department of Environmental Protection and Office of Environmental Advocate.

Relief Requested

Based on the above, Appellant is requesting that the permit at issue be retracted, and all work being executed in reliance on said permit be ordered immediately halted, until such time as the above specific objections have been adjudicated.

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REQUIRED ATTACHMENTS

Pursuant to W.Va. CSR 46-4-2(d), Appellant includes the permit letter provided to the Jefferson County Development Authority by the W.Va. Department of Environmental Protection on March 29, 2019 notifying the JCDA of their authorization to operate under Permit No WV0111457.

However, Appellant has been unable to produce said official permit because the document is contained on a secure site which cannot be accessed by members of the public. Appellant has submitted a FOIA request for said permit, and received a documents with links as attached below. However, said hyperlink returns a blocked site for which Appellant, and likely all other members of the public, are prohibited.

Appellant requests that said document be produced in accordance with Appellant's FOIA request and attached to this Appeal.



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, West Virginia 25304-2345
Phone: 304-926-0495
Fax: 304-926-0496

Austin Caperton, Cabinet Secretary
www.dep.wv.gov

March 29, 2019

JEFFERSON COUNTY DEVELOPMENT AUTHORITY
PO BOX 237
CHARLES TOWN, WV 25414

Re: WV/NPDES Permit No. WV01 11457
General Permit Registration No. WVG611874
TeMa North America, LLC Jefferson County Operations,
Jefferson County

Dear Permittee:

The Division of Water and Waste Management has reviewed your General Permit Site Registration Application Form for the coverage of your activity. Based upon the information you submitted on this registration form, you are now authorized to operate under WV/NPDES General Water Pollution Control Permit No. WV0111457, issued March 3, 2014. The general permit can be found at: <http://www.dep.wv.gov/WWE/Programs/stormwater/multisector/Pages/home.aspx>. You should carefully read the contents of the permit and become familiar with all requirements needed to remain in compliance with the permit.

Although you should be aware of all the terms and conditions of this permit, we wish to advise you of the following important requirements:

1. You are subject to the monitoring requirements of Sector N-1 of the General Permit.
2. In accordance with Section B.18. of the General Permit, you are required to have a complete storm water pollution prevention plan (SWPPP) and a groundwater protection (GPP) plan. These plans are to be retained on site and be available for review by the Director or the Director's authorized representative.
3. The current General Permit expires on August 31, 2019. If you wish to continue a regulated activity after the expiration date of this permit, provisions for coverage will be made during the public notice process for any new General Permit to be issued at that time.
4. Facilities permitted to discharge pollutants to the waters of the State under Chapter 22, Article 11 of the West Virginia Code are required to test their effluent in order to verify permit compliance. This testing is the responsibility of the permittee and these test results are to be submitted to this office on the enclosed Discharge Monitoring Report (DMR) forms.

Special Condition. The approved Groundwater Protection Plan (GPP) shall be maintained at the plant site and shall be available for inspection by the Division of Water and Waste Management personnel. The GPP approval afforded by this permit shall not relieve the permittee of any requirements pertaining to the Above Ground Storage Tank (AST) Program.

All monitoring required by this permit is benchmark monitoring. This monitoring is not an effluent limitation and should not be construed as such. It is merely an indicator of whether or not the facilities discharges indicate if there is a reasonable potential to violate state water quality standards. If the benchmarks are exceeded, then the permittee must immediately review both the stormwater and groundwater protection plans to reduce pollutant levels to meet the benchmark levels.

During the review of your site registration application form it was discovered that the pollutant analysis for the eight baseline parameters required of all sites was not submitted for Outlets 001 and 002. Within sixty (60) days of your initial plant start-up, or as soon thereafter as climatic conditions allow, you must submit this analysis. Please be advised that your monitoring requirements may be subject to change based upon this analysis.

If required by the assigned industrial sector, you must perform this sampling and analysis once every six (6) months. However, the DMR forms are to be completed and submitted to this office 20 days following the end of each required six (6) month sampling period. Failure to submit required DMRs is a violation of the permit and can lead to enforcement actions being taken by this agency for noncompliance. It is suggested that several copies of the enclosed DMR forms be made for your future use, as this office does not supply permittees with DMR forms. Your first DMR is due on or before October 20, 2019.

Your annual permit fee has been assessed as \$250.00. You will be invoiced by this agency one month prior to the anniversary date of your original approval date. Failure to submit the annual fee within 90 days of the due date will render your permit void upon the date you are mailed a certified written notice to that effect.

Finally, note that copies of all future correspondence regarding the permit registration must be sent to the following addresses:

Department of Environmental Protection
Division of Water and Waste Management
Permitting Section
601 57th Street SE
Charleston, WV 25304-2345

Department of Environmental Protection
Environmental Enforcement
22288 Northwestern Pike
Romney, WV 26757

The validity of this General Permit Registration is contingent upon payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.

JEFFERSON COUNTY DEVELOPMENT AUTHORITY

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March 29, 2019

Your efforts toward preventing the degradation of our natural resources are greatly appreciated. If you have any questions, please contact Patrick Burch of this Division at (304) 926-0499 extension 1067, or by email at Patrick.D.Burch@wv.gov or at Patrick.D.Burch@wv.gov.

Harold D. Ward
Acting Director
WV DEP-Division of Water & Waste Mgt.
601 57th St SE
Charleston, WV 25304-2345
Phone: (304) 926-0495
Fax: (304) 926-0463

From: David Tabb <sssi27@yahoo.com>

Sent: Tuesday, April 23, 2019 2:54 PM

To: DEP FOIA <DEPFOIA@wv.gov>

Subject: Jefferson County Development Authority, TeMa Facility Storm water permit # WVG611874

I, David Tabb, under *West Virginia Code § 29B-1-1* of the *Freedom of Information Act* request a copy of the following document in its entirety to wit:

Jefferson County Development Authority, TeMa Facility Storm water permit # WVG611874

Please enclose all documentation required to file an appeal with the Environmental Quality Board.

David Tabb

107 Tabb Lane

Harpers Ferry, WV 25425

304-676-5976

From: DEP FOIA <DEPFOIA@wv.gov>
To: David Tabb <sssi27@yahoo.com>
Sent: Tuesday, April 23, 2019, 04:34:57 PM EDT
Subject: RE: FOIA Request #2019-04-088

Hello:

This letter is to acknowledge that the West Virginia Department of Environmental Protection's (DEP) Public Information Office received your Freedom of Information Act Request (FOIA) on April 23, 2019. Your request has been sent to the appropriate office(s) within our agency and you will be notified as to when you may review/copy/receive the requested information.

Information in agency files is available for public inspection. However, some material may be exempt from disclosure under the West Virginia Freedom of Information Act, Chapter 29B.

DEP also provides an informational service to the public. Visitors to the agency's website can subscribe to both a listing of permit actions open to public comment and updates on DEP news and events. To subscribe to these e-mail notifications, go to <http://www.dep.wv.gov/insidedep/Pages/DEPMailingLists.aspx>. **Please submit all FOIA's to depfoia@wv.gov.**

There is no charge to submit a FOIA request. However, there are charges associated with copying the requested information. The more common fees include \$0.25 per page for paper copies and \$10 per disc for electronic copies saved to CD/DVD. If you need further assistance, please contact me at 304-926-0499 ext. 1641.

Regards,

Terry Fletcher

WVDEP – Public Information

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CERTIFICATE OF SERVICE

I, David C. Tabb, do hereby certify that I, on this 29th day of April, 2019 served the attached *Notice of Appeal* (Jefferson County Development Authority/TeMa USA, LLC., Permit #WRG 611874) to the following parties:

By United States Mail, postage prepaid:

Jackie Shultz, Clerk, Original and 6 copies
Environmental Quality Board
601 57th Street, SE
Charleston, WV 25304

First Class Mail

Jason Wandling and distributed parties
WVDEP – Office of Legal Services
601 57th Street, SE
Charleston, WV 25304

First Class Mail

Harold Ward, Deputy Secretary for Operations
DEP, Water and Waste Management
601 57th Street, SE
Charleston, WV 25304

First Class Mail

Jefferson County Development Authority

1948 Wiltshire Road, Suite 4
Kearneysville, WV 25430

TeMa USA, LLC
Jefferson County Facility
395 Steeley Way
Kearneysville, WV 25430

First Class Mail

First Class Mail



David C. Tabb

cc:
EPA – Region III
1650 Arch St
Philadelphia, PA 19103

Via – Email
Vyas.himanshu@epa.gov