

**HAMSTEAD & ASSOCIATES, L.C.**  
**ATTORNEYS AT LAW**  
507 S FAIRFAX BOULEVARD  
CHARLES TOWN, WEST VIRGINIA 25414  
PHONE: (304) 725-1468  
E-MAIL: [bhamstead@hamsteadandassociates.com](mailto:bhamstead@hamsteadandassociates.com)

RECEIVED

FEB 23 2026

Environmental Quality  
Board

Braun A. Hamstead (WV)

February 17, 2026

Kenna M. DeRaimo, Clerk  
Environmental Quality Board  
601 57<sup>th</sup> Street, SE  
Charleston, WV 25304

*via US First Class mail*

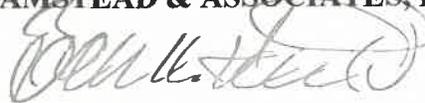
RE: Notice of Appeal  
Gantt's Excavating and Contracting, Inc. v. Jeremy Bandy, Director, Environmental  
Enforcement

Dear Ms. DeRaimo:

Enclosed please find an original and six (6) copies of the **Notice of Appeal** for filing in the above-referenced matter. Also enclosed is an original and six (6) copies of a Motion for Stay with a Memorandum of Authority for filing.

Should you have any questions please do not hesitate to contact my office.

*Very truly yours,*  
**HAMSTEAD & ASSOCIATES, L.C.**



Braun A. Hamstead, Esq.

BAH/jes

Encl: as stated

cc: Gantt's Excavating and Contracting, Inc

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

RECEIVED

FEB 23 2026

**GANTT'S EXCAVATING AND CONTRACTING, INC.**

Environmental Quality  
Board

**Appellant,**

v.

Appeal No. 26-01-EQB

**JEREMY BANDY, DIRECTOR,  
DIVISION OF WATER AND WASTE MANAGEMENT,  
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,**

**Appellee.**

**NOTICE OF APPEAL**

**A. Statement of Action Complained of:**

Comes Gantt's Excavating and Contracting, Inc., the above named appellant, and respectfully represents that it is aggrieved by the official action of the West Virginia Department of Environmental Protection, Division of Water and Waste Management, Office of Environmental Enforcement dated January 16, 2026, a copy of which is hereto attached as Exhibit A (hereinafter sometimes referred to as "Directive").

**B. Statement of Relief Requested:**

Appellant Gantt's therefore prays that this matter be reviewed and, for the reasons set forth in Section C below, that the Board grant the following relief:

1. That the Board grant a stay so that Gantt's is not further required to respond to the DEP's January 16, 2026, Directive (Exhibit A), pending the Board's determination of this appeal on its merits;
2. That the DEP's said Exhibit A Directive be ordered rescinded;

3. That, in the alternative, the Board determine that the response filed by Gantt's to the DEP's January 16, 2026, Directive be deemed adequate and appropriate under the circumstances. (Please *see* attached Exhibit D.)<sup>1</sup>

**C. Statement of Specific Objections:**

1. The January 16, 2026, Directive requiring a revised POCA is based on the following three grounds which Gantt's believes are invalid:

**a. Failure to Attach Complete SWPPP**

Appellee cites Gantt's for failure to attach to its POCA its entire Stormwater Pollution Prevention Plan (SWPPP) but while several pages were missing, the entire report is in Appellee's possession.

**b. Conditions Not Allowable at Shale Pit**

Appellee cites Gantt's for Conditions Not Allowable based on Site Visits *back on March 17, 2025, and May 15, 2025*, regarding Gantt's Shale Pit Permit #WVG612088 yet Gantt's cannot ascertain why Appellee's inspector reached such decision. *Further, Gantt's was subsequently issued the above discharge permit for this site on November 19, 2025.*

**c. Resampling of Oil Droppings Required at Shop**

Appellee alleges that sampling results provided to the DEP *back in October 2024*, by Gantt's expert, Triad Engineering, regarding the Shop Area Permit #WVG612790, contained errors and therefore deeper soil borings and resampling is required which is untrue because Triad Engineering's procedures sufficiently followed proper protocol in the sampling and analysis and Gantt's remediation was

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<sup>1</sup> This Exhibit is submitted without the attachment to reduce duplication and the size of the Notice.

sufficient to meet Tier 1 cleanup levels. *Further, Gantt's was subsequently issued the above said discharge Permit on May 30, 2025, some two years after the oil droppings discovery.*

2. Appellant objects to these findings for the following reasons:

**a. Failure to Attach Complete SWPPP**

The Department had in its possession all the components of the SWPPP.

Nonetheless, Gantt's admits that it inadvertently failed to provide duplicate copies of all the pages previously approved and has supplied same with its Exhibit D Response.

**b. Conditions Not Allowable at Shale Pit**

The Exhibit A Directive cites unknown violations relating to site visits conducted back on March 17, 2025, and May 17, 2025. By letter dated May 24, 2025, Gantt's responded regarding the DEP's March 17, 2025, site visit with photos demonstrating that the discharge was clear and supporting lab reports. Gantt's was never provided with any notice of the May 17, 2025, site visit making it impossible for Gantt's to determine what remediation the DEP believed necessary. On February 6, 2026, in response to the request by Gantt's counsel for a report from these site visits, Gantt's was provided only with copies of photos which are attached as Exhibit B with no accompanying information. Therefore, Gantt's is still unable to determine where, or why such remediation is necessary or what action would need to be taken to remediate. By way of example a photo depicting sediment in a sediment pond which is designed to collect sediment after a storm event, is not evidence of a Condition Not Allowable.

**c. Resampling of Oil Droppings Required at Shop**

It is respectfully submitted that Triad Engineering, a well-respected firm staffed by engineers and scientists providing environmental services for 50 years, sufficiently maintained chain of custody and properly preserved the subject soil samples for testing back in October of 2024. Triad Engineering has conclusively demonstrated that no contaminated soil exists in the Shop Area. Further testing of the soil nearly two years later at a cost of approximately \$16,000 is unreasonable and will create unnecessary hardship for Appellee. (Please *see* Exhibits C and E.) The samples were taken well below the surface with a backhoe so there exists no reason to believe that oil residue could be found even further down so as to justify “core drillings” as required by DEP’s January 16, 2026, Directive. Please *see* Exhibit C, response of Triad Engineering regarding its prior sampling and the validity of the results it obtained.

Wherefore, Appellant Gantt’s prays that the Board grant it the following relief:

- a. That a stay be issued pending resolution of this Appeal;
- b. That upon the conclusion of this appeal, this Board Order that the January 16, 2026, Directive from the Environmental Enforcement Division of the DEP to Gantt’s be rescinded or, in the alternative that this Board determine that Gantt’s February 13, 2026, response to the Directive is adequate and appropriate under the circumstances.

Dated this \_\_\_\_\_ day of February 2026.

**GANTT’S EXCAVATING AND  
CONTRACTING, INC.**

By Counsel



Braun A. Hamstead, Esquire  
WV State Bar ID No. 1568  
HAMSTEAD & ASSOCIATES, L.C.  
507 S. Fairfax Blvd.  
Charles Town, WV 25414  
Phone: 304-725-1468  
[bhamstead@hamsteadandassociates.com](mailto:bhamstead@hamsteadandassociates.com)  
*Counsel for Appellant*

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

**GANTT'S EXCAVATING AND CONTRACTING, INC.**

**Appellant,**

v.

Appeal No. 26-01-EQB

**JEREMY BANDY, DIRECTOR,  
DIVISION OF WATER AND WASTE MANAGEMENT,  
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,**

**Appellee.**

**CERTIFICATE OF SERVICE**

I, Braun A. Hamstead, counsel for the Appellant, Gantt's Excavating and Contracting, Inc., in this action do hereby certify that a true and correct copy of the **Notice of Appeal, Motion for Stay and Memorandum of Authority in Support of Motion for Stay** was served upon the following by U.S. First Class mail this 17<sup>th</sup> day of February, 2026:

Jeremy Bandy, Director  
Division of Water and Waste Management  
WV Department of Environmental Protection  
601 57<sup>th</sup> St., SE  
Charleston, WV 25304

Brad Wright, Chief Inspector  
Environmental Enforcement – Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304

Samantha Blair, Assistant Chief Inspector  
Environmental Enforcement – Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304



**Braun A. Hamstead, Esquire**  
**WV State Bar No. 1568**  
HAMSTEAD & ASSOCIATES, L.C.  
507 S. Fairfax Blvd.  
Charles Town, WV 25414  
Phone: 304-725-1468  
[bhamstead@hamsteadandassociates.com](mailto:bhamstead@hamsteadandassociates.com)  
*Counsel for Appellant*



west virginia department of environmental protection

Environmental Enforcement  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Telephone: (304) 926-0470 Fax: (304) 926-0488

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

January 16, 2026

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

**CERTIFIED RETURN RECEIPT REQUESTED**

9489 0090 0027 6726 0171 13

Re: Plan of Corrective Action

Dear Mr. Smith:

West Virginia Department of Environmental Protection (WVDEP) has received your Plan of Corrective Action (POCA), dated May 24, 2025, as required by Item No. Two (2) under the Order for Compliance section of Order No. MM-25-05.

WVDEP has determined that the enclosed POCA is not acceptable and has not been approved due to the deficiencies noted below:

- The Stormwater Pollution Prevention Plan (SWPPP) provided as Appendix C to the proposed POCA is incomplete and missing several required pages. An approvable POCA would include a complete SWPPP with all required information.
- The proposed POCA does not provide for adequate controls at Outlets 003 and 004 to prevent further occurrences of sediment laden water reaching the stream. Site visits conducted on March 17, 2025, and May 15, 2025, indicated that Conditions Not Allowable was occurring at and downstream of the Outlets. An approvable POCA would include additional controls that will prevent future occurrences of Conditions Not Allowable.
- The proposed POCA includes correspondence, dated February 20, 2025, that was prepared as a response to WVDEP's comments regarding the Remedial Excavation, Sampling, and Testing Report, which was originally provided to WVDEP in October 2024. Upon review of the correspondence, WVDEP personnel have determined that the sample results do not provide sufficient confirmation that proper remediation of the affected areas has been achieved. Multiple discrepancies, such as errors on the chain of custody form and samples held outside of the required temperature criteria, necessitate that a resampling event be conducted. As such, an approvable POCA would include detailed provisions and a schedule for conducting the resampling event and for submitting a report to WVDEP that includes, at a minimum, a comparison of the sample

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results to appropriate standards, such as the Tier 1 Action Levels outlined in the WVDEP Corrective Action Guidance Document. Among other requirements, an approvable resampling event would involve taking borings that are deeper than the borings for the previous sampling event and utilizing a PID to ensure that samples are taken at the depth of the highest reading. Lastly, an approvable POCA would include provisions and a schedule for submitting a Supplemental POCA that would detail additional remediation measures, should results from the resampling event indicate that contamination is still present in the affected areas.

Within ten (10) days of receipt of this correspondence, Gantt's Excavating and Contracting, Inc shall submit a revised POCA that addresses the aforementioned deficiencies. Failure to submit an approvable POCA is a violation of the Order. The POCA shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

Should you have any questions regarding this matter, please contact me at (304) 926-0470.

Sincerely,

  
Samantha Blair  
Assistant Chief Inspector

Enclosure

cc: Brad Wright, Chief Inspector, EE (via e-mail)  
Gregory C. Morris, Assistant Chief Inspector, EE/WW (via e-mail)  
Laura McGee, Environmental Resources Program Manager, EE (via e-mail)  
Cindy Blugerman, Environmental Resources Specialist, EE (via e-mail)  
Amaris Elliott, Environmental Resources Associate, EE (via e-mail)  
Robin C. Dolly, Environmental Inspector Supervisor, EE/WW (via e-mail)  
Michael Kanehl, Environmental Inspector Specialist, EE/WW (via e-mail)  
John McGhee, Kay Casto & Chaney PLLC (via e-mail)

**Gantt's Excavating – Plan of Corrective Action**

**May 24, 2025**

**RECEIVED**

MAY 27 2025

ENVIRONMENTAL  
ENFORCEMENT  
CHARLESTON

**POCA Denial Response Letter**

**Appendix A – Discharge Photos & Lab Results**

**Appendix B – POCA Denial Letter**

**Appendix C – SWPPP**

**Appendix D – Triad Response**



PO Box 974  
Martinsburg, WV 25402  
304-229-6515

May 24, 2025

Ms. Samantha Blair  
Assistant Chief Inspector  
Environmental Enforcement – Mail Code #031328  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304

RE: POCA Denial Response Letter  
Revised POCA

Dear Ms. Samantha Blair:

Gantt's Excavating & Contracting, Inc. received the POCA Denial letter dated April 15, 2025 on May 16, 2025. Enclosed is our response to each comment, as well as our remedial measures/actions taken to address them:

**Comment:** *On March 17, 2025, WVDEP personnel conducted a site visit at the shale pit. During the site visit, WVDEP personnel observed and documented sediment-laden water discharging from the facility. The installed controls, including ditches and ponds, did not adequately prevent sedimentation and erosion at the facility. Therefore, an approvable POCA would include provisions for installing and maintaining controls that are sufficient for preventing solids from leaving the site and entering receiving waters. Furthermore, an approvable POCA would include a copy of the revised SWPPP, complete with the updated Sediment and Erosion Control Plan.4*

**Response:** Monitored pollutants have been significantly reduced with installed controls. Photos taken on March 17, 2025 show clear discharge. Please see enclosed photos and lab reports.

**Comment:** *There is no commitment in the proposed POCA to immediately reporting noncompliance which may endanger health and/or the environment. Furthermore, the POCA does not include provisions for providing a written submission within five (5) days after becoming aware of the circumstances, as required by Appendix A.IV.2 of the WV/NPDES permit.*

**Response:** Gantt's is committed to immediately reporting noncompliance which may endanger health and/or the environment and provide a written submission within five (5) days after becoming aware of the circumstances as required by Appendix A.IV.2

**Comment:** *The proposed POCA states that Gantt's Excavating and Contracting, Inc expects to hear back from Triad on February 10, 2025. Because that date has now passed, an approvable POCA would include provisions for fully addressing discrepancies/errors in Triad's report and providing documentation which sufficiently demonstrates that the site had been properly remediated.*

**Response:** Please see enclosed response from Triad.

Please feel free to reach out with any questions or concerns regarding our responses.

Sincerely,

A handwritten signature in black ink, appearing to read "Derick Smith". The signature is fluid and cursive, with the first name "Derick" being more prominent than the last name "Smith".

Derick Smith, EIT  
Quality Control Manager  
304-702-2534 (Cell)

*dsmith@gantts-excavating.com*

## **Appendix A**

MARCH 5, 2025

OUTLET 003



OUTLET 004



MARCH 17, 2025

OUTLET 003



OUTLET 004



APRIL 3, 2025

OUTLET 003

OUTLET 004

NO FLOW



3020 VENTRIE COURT  
MYERSVILLE, MD 21773



(301) 293-3340  
INFO@FTLAB.COM

**Client:** Gantt's Excavating  
PO Box 974  
Martinsburg, WV 25402

**Project:** Gantt's Stormwater WVG612088  
January 2025  
**Site:** N/A

**Work order: FZA0735**

**Received at lab:** 01/31/25 11:18  
**Site Reported:** 02/06/25 08:55  
**Collected by:** Brian Malatt  
**Treatment:** N/A

**Source: Outlet 003**  
Stormwater)(Grab)

**Regulatory ID: WVG612088**  
Collected: 01/31/25 09:27

Analyzed by: Fredericktowne Labs:

ID	Parameter	Result	Units	MRL	MDL	DF	Prepared	Analyzed	Analyst	Qual	Method
1735-01	Iron	0.31	mg/L	0.001	0.0005	1	02/05/25 12:08	02/05/25 12:08	NM		200.8
1735-01	Solids - Total Suspended	29.0	mg/L	1.6	1.6	1	02/04/25 14:00	02/05/25 10:01	JD		SM2540-D

**Source: Outlet 004**  
Stormwater)(Grab)

**Regulatory ID: WVG612088**  
Collected: 01/31/25 09:40

Analyzed by: Fredericktowne Labs:

ID	Parameter	Result	Units	MRL	MDL	DF	Prepared	Analyzed	Analyst	Qual	Method
1735-02	Iron	0.11	mg/L	0.001	0.0005	1	02/05/25 12:11	02/05/25 12:11	NM		200.8
1735-02	Solids - Total Suspended	4.9	mg/L	1.1	1.1	1	02/04/25 14:00	02/05/25 10:01	JD		SM2540-D

*Sara E. Randall*  
Sara E. Randall, President

Fredericktowne Labs, Inc. is a State Certified Water Quality Laboratory  
Maryland Cert. No. 116 Virginia Cert. No. 00444  
West Virginia Cert. 415 MDOT WBE Cert. No.: 91-158

3020 VENTRIE COURT  
MYERSVILLE, MD 21773



(301) 293-3340  
INFO@FTLAB.COM

**Client:** Gantt's Excavating  
PO Box 974  
Martinsburg, WV 25402

**Project:** Gantt's Stormwater WVG612088  
April 2025  
**Site:** N/A

**Work order: FZD0365**

**Received at lab:** 04/08/25 11:25  
**Date Reported:** 04/15/25 10:10  
**Collected by:** Brian Malatt  
**Treatment:** N/A

**Source: Outlet 003**  
(Stormwater)(Grab)

**Regulatory ID: WVG612088**  
Collected: 04/07/25 15:00

*Data Analyzed by: Fredericktowne Labs:*

Lab ID	Parameter	Result	Units	MRL	MDL	DF	Prepared	Analyzed	Analyst	Qual	Method
FZD0365-01	Iron	0.35	mg/L	0.10	0.0005	1	04/11/25 14:08	04/11/25 14:08	NM		EPA 200.8
FZD0365-01	Solids - Total Suspended	12.2	mg/L	2.0	2.0	1	04/10/25 11:41	04/11/25 10:37	JD		SM2540-D

**Source: Outlet 004**  
(Stormwater)(Grab)

**Regulatory ID: WVG612088**  
Collected: 04/07/25 14:45

*Data Analyzed by: Fredericktowne Labs:*

Lab ID	Parameter	Result	Units	MRL	MDL	DF	Prepared	Analyzed	Analyst	Qual	Method
FZD0365-02	Iron	0.46	mg/L	0.10	0.0005	1	04/11/25 14:04	04/11/25 14:04	NM		EPA 200.8
FZD0365-02	Solids - Total Suspended	10.8	mg/L	1.1	1.1	1	04/10/25 11:41	04/11/25 10:37	JD		SM2540-D

*Sara E. Randall*  
Sara E. Randall, President

*Fredericktowne Labs, Inc. is a State Certified Water Quality Laboratory  
Maryland Cert. No. 116 Virginia Cert. No. 00444  
West Virginia Cert. 415 MDOT WQE Cert. No.: 91-158*

## **Appendix B**



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west virginia department of environmental protection

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Environmental Enforcement  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Telephone: (304) 926-0470 Fax: (304) 926-0488

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

April 15, 2025

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

**CERTIFIED RETURN RECEIPT REQUESTED**

**9489 0090 0027 6692 2517 40**

Re: Plan of Corrective Action

Dear Mr. Smith:

West Virginia Department of Environmental Protection (WVDEP) has received your Plan of Corrective Action (POCA), dated February 6, 2025, as required by Item No. Two (2) under the Order for Compliance section of Order No. MM-25-05.

WVDEP has determined that the enclosed POCA is not acceptable and has not been approved due to the deficiencies noted below:

- On March 17, 2025, WVDEP personnel conducted a site visit at the shale pit. During the site visit, WVDEP personnel observed and documented sediment-laden water discharging from the facility. The installed controls, including ditches and ponds, did not adequately prevent sedimentation and erosion at the facility. Therefore, an approvable POCA would include provisions for installing and maintaining controls that are sufficient for preventing solids from leaving the site and entering receiving waters. Furthermore, an approvable POCA would include a copy of the revised SWPPP, complete with the updated Sediment and Erosion Control Plan.
- There is no commitment in the proposed POCA to immediately reporting noncompliance which may endanger health and/or the environment. Furthermore, the POCA does not include provisions for providing a written submission within five (5) days after becoming aware of the circumstances, as required by Appendix A.IV.2 of the WV/NPDES permit.
- The proposed POCA states that Gantt's Excavating and Contracting, Inc expects to hear back from Triad on February 10, 2025. Because that date has now passed, an approvable POCA would include provisions for fully addressing discrepancies/errors in Triad's report and providing documentation which sufficiently demonstrates that the site has been properly remediated.

Promoting a healthy environment.

Within ten (10) days of receipt of this correspondence, Gantt's Excavating and Contracting, Inc shall submit a revised POCA that addresses the aforementioned deficiencies. Failure to submit an approvable POCA is a violation of the Order. The POCA shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

Should you have any questions regarding this matter, please contact me at (304) 926-0470.

Sincerely,



---

**Samantha Blair  
Assistant Chief Inspector**

**Enclosure**

cc: **Brad Wright, Chief Inspector, EE (via e-mail)**  
**Gregory C. Morris, Assistant Chief Inspector, EE/WW (via e-mail)**  
**Laura McGee, Environmental Resources Program Manager, EE (via e-mail)**  
**Cindy Blugerman, Environmental Resources Specialist, EE (via e-mail)**  
**Amaris Elliott, Environmental Resources Associate, EE (via e-mail)**  
**Robin C. Dolly, Environmental Inspector Supervisor, EE/WW (via e-mail)**  
**Michael Kanehl, Environmental Inspector Specialist, EE/WW (via e-mail)**  
**John McGhee, Kay Casto & Chaney PLLC (via e-mail)**



PO Box 974  
Martinsburg, WV 25402  
304-229-6515

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FEB 11 2025

ENVIRONMENTAL  
ENFORCEMENT  
CHARLESTON

February 06, 2025

Chief Inspector  
Environmental Enforcement – Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304

RE: WV/NPDES Permit No. WV0111457  
Registration No. WVG612790  
Registration No. WVG612088  
Consent Order #: MM-25-05  
Plan of Corrective Action

To Whom It May Concern:

Gantt's Excavating & Contracting, Inc. is in receipt of the Consent Order dated October 31, 2024. This Plan of Corrective Action follows the informal hearing held on January 16, 2025 at which time information was provided. Below is our response to each violation/comment with a general description of remedial measures/actions taken to address each item followed by a more detailed timeline of the remedial measures/actions taken:

*Comment: 2.a. Appendix A.1.8 – 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.*

**Response:** The earliest training record Gantt's has maintained is dated 01/03/2023. However, due to a misunderstanding the training reports had been stored in the Gantt's Shop Facility office. On 07/21/2023 the training reports were moved to the SWPPP box on-site.

Lab results for the Shale Pit are and have been located in the SWPPP box on-site. This has been the case since permitted activities began.

*Comment: 2.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.*

**Response:** All long-term erosions and sediment controls as shown in the Sediment and Erosion Control Plan have been in place since permitted activities began. Any areas where permitted activity has stopped have been seeded and mulched. Some of these areas consist of loose shale on top of solid shale which is considered to be a stabilized material. The photos that were included with the NOV's labeled "Erosion with no E&S controls" and "Erosion on south side of facility" are of the areas consisting of loose shale on top of solid shale.

**Comment:** 2.c. 33CSR/ Section 7.1.a and 22-15-10(a) – Gantt's created an open dump of construction material and other miscellaneous solid waste.

**Response:** Gantt's was made aware of illegal dumping onto the permitted area on 07/14/2023. Gantt's removed the materials illegally dumped onto the permitted area on 07/14/2023.

**Comment:** 3.a.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.

**Response:** Gantt's modified the SWPPP on 09/24/2024 to reflect this activity as a potential pollution source. A formal update of the SWPPP was delayed pending the informal hearing regarding the consent order. The formal update and application to renew the Multisector Permit is expected to be completed by 02/10/2025.

**Comment:** 3.a.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.

**Response:** Gantt's was unable to find any petroleum stains, or any leaking equipment as observed by Inspector Michael Kanehl at the Shale Pit. However, Gantt's began parking equipment in designated areas so that the equipment will be parked with absorbing pads beneath them on 09/15/2024 at the Shale Pit. This is above and beyond industry standard, and has been implemented to show good faith and commitment to the protection of the quality of the Waters of the State.

**Comment:** 3.a.iii. Page 3 of 4 of the Sediment and Erosion Control Plan required by Section B.17.A.2.a.6 showed controls 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.

**Response:** All long-term erosions and sediment controls as shown in the Sediment and Erosion Control Plan have been in place since permitted activities began. Any areas where permitted activity has stopped have been seeded and mulched. Some of these areas consist of loose shale on top of solid shale which is considered to be a stabilized material. The photos that were included with the NOV's labeled "Erosion with no E&S controls" and "Erosion on south side of facility" are of the areas consisting of loose shale on top of solid shale.

**Comment:** 3.a.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.

**Response:** The Sediment and Erosion Control Plan incorrectly labeled a forebay that discharges into another forebay as Outlet 003. The SWPPP was modified on 09/24/2024 to correctly label the outlets. A formal update of the SWPPP was delayed pending the informal hearing regarding the consent order. The formal update and application to renew the Multisector Permit is expected to be completed by 02/10/2025.

Comment: 3.a.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 was moved to a stormwater pond on the Hedgenville Post Office Parcel. Gant's, therefore, failed to maintain current information in the SWPPP.

**Response:** The SWPPP was modified on 09/24/2024 to show the removal of this property and erosion and sediment control measures implemented to redirect stormwater away from Outlet 001. A formal update of the SWPPP was delayed pending the informal hearing regarding the consent order. The formal update and application to renew the Multisector Permit is expected to be completed by 02/10/2025.

Comment: 3.b. Section B.6 – Gant'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).

**Response:** The SWPPP was modified on 09/24/2024 to show additional erosion and sediment control measures intended to reduce iron and TSS from stormwater discharges. A formal update of the SWPPP was delayed pending the informal hearing regarding the consent order. The formal update and application to renew the Multisector Permit is expected to be completed by 02/10/2025.

Comment: 3.c. Appendix A.I.12 and 47CSR2 Section 3.2.a – Gant'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.

**Response:** Beginning on 07/10/2023 in response to a historic rain event Gant's began making enhancements to erosion and control measure such as check dams as well as mucking out and enlarging existing sediment traps and their forebays. An additional forebay to Outlet 004 was also installed. This work was completed on 12/20/2024 and has had a positive impact on water quality leaving the site. A collection of photos depicting the completed enhancements were provided at the informal hearing on January 16, 2025. A video of the area shortly after the historic rain event was also offered at the informal hearing, and is available upon request.

Comment: 3.d. Appendix A.IV.2 – Gant'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, Gant's failed to report the aforementioned spill into waters of the State and failed to submit a five (5)-day follow-up report.

**Response:** At the informal hearing that took place on January 16, 2025, information was provided to WVDEP describing the work and incurred expenses to address the quality of stormwater discharge from the permitted area, as well as a collection of photos showing the completed work and visibly improved stormwater quality.

Comment: 7.a. 47CSR58 Section 7.1 – Gant'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.

**Response:** Gant's immediately began making arrangements for soil remediations and soil testing by a third party. After taking initial soil samples, the originally contracted environmental consultant advised Gant's to remove the equipment that were in the area of the contaminated soils prior to remedial excavations. One of the equipment to be removed was a large wheel loader, the removal of which proved to be the primary cause of a significant delay. Soil remediation, contaminate disposal, and testing report all were completed on 10/02/2024.

**Comment:** 7.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.

**Response:** On 05/20/2024 at the Shop Facility, Gantt’s began parking equipment in designated areas so that the equipment will be parked with absorbing pads beneath them. This was done after the last of the excavated contaminated soils were removed from the facility. This is above and beyond industry standard, and has been implemented to show good faith and commitment to the protection of the Waters of the State.

**Comment:** 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.

**Response:** On 01/17/2025 Gantt’s reached out to Triad (the engineering firm that prepared the report) to address these discrepancies/errors after being made aware of nature of these discrepancies/errors at the informal hearing on 01/16/2025. Gantt’s is expecting to hear back from them 02/10/2025.

## **Shale Pit**

### **Timeline:**

On July 9, 2023 a historic rain event occurred in the area of the permitted site which altered the quality of the stormwater discharge not only on that day, but even through to the end of 2024. To our knowledge prior to that rain event monitored pollutants had not exceeded concentration benchmarks. A video of the area shortly after this event was offered at the informal hearing, and is available upon request.

The below timeline shows Gantt’s efforts to improve the quality of the stormwater discharge from the facility. Documentation of efforts/work during the period between July 10, 2023 and August 22, 2024 were not readily available and are thus not reflected in the timeline. These efforts/work include additional BMP maintenance, seeding and mulching, etc. Other gaps in activity are the result of worker availability, holidays, and other factors outside of Gantt’s control, and should not be taken as a deliberate effort on Gantt’s part to delay or avoid taking action to achieve compliance.

- **July 10, 2023:** Gantt’s began work to improve stormwater discharge quality starting by adding check dams up stream of facility outlets. Inspector Michael Kanehl was seen on site performing an inspection.
- **July 14, 2023:** Notice of Violation w23-02-048-mkk was issued. Gantt’s was made aware of illegal dumping via this NOV, and removed all illegally dumped materials from the facility.
- **July 31, 2024:** Inspector Michael Kanehl performed an inspection.
- **August 9, 2024:** Inspector Michael Kanehl performed an inspection.
- **August 22, 2024:** Notice of Violation w24-02-040-mkk was issued.
- **August 26, 2024:** Construction of a diversion berm along the north end of the facility began. The purpose of this berm is to redirect stormwater away from Outlet 001 and to Outlet 002.
- **September 3, 2024:** Construction of the diversion berm was completed.
- **September 10, 2024:** Construction of a forebay for sediment trap at Outlet 004 began. The purpose of this forebay is to improve the quality of stormwater discharge at Outlet 004.
- **September 15, 2024:** Gantt’s began parking equipment in designated areas so that the equipment will be parked with absorbing pads beneath them.
- **September 20, 2024:** Construction of the forebay was completed.
- **September 24, 2024:** SWPPP modifications were added to the SWPPP in the on-site SWPPP Box.

- October 2, 2024: Response to NOV w24-02-040-mkk was submitted.
- October 31, 2024: Consent Order MM-25-05 was issued.
- November 19, 2024: Construction began to redirect roadside ditch within facility from sediment trap at Outlet 003 to a forebay upstream of Outlet 003 via culvert crossing.
- November 29, 2024: Redirection of ditch completed.
- December 15, 2024: Work began to muck out and increase compacity of the sediment trap at Outlet 003 and the forebays upstream of Outlet 003.
- December 20, 2024: Completion of work to muck out and increase the compacity of the sediment trap and forebays upstream of Outlet 003.
- January 16, 2025: An in-person meeting between Gantt's Excavating and WVDEP regarding the Consent Order MM-25-05 took place.

## Shop Facility

### Timeline:

On October 31, 2024 an inspection was performed of the facility by Inspector Michael Kanehl resulting in NOV#: w23-02-082-mkk. Facility operators were made aware of improperly disposed of solid waste (petroleum/chemical). Some of this waste was directly underneath of a large wheel loader that was no longer operational.

On November 13, 2023 after completion of the initial soil samples, GEC advised Gantt's to have the wheel loader as well as other pieces of equipment removed from the facility prior to performing remedial excavations. During the time between November 13, 2023 and May 1, 2024 Gantt's coordinated and attempted multiple conventional methods of removing the wheel loader. However, due to the size and weight of the loader, it was determined that the loader could not be removed by conventional means, and it was further determined the loader would have to be dismantled and cut into pieces to be removed. Coordination between scheduling skilled labor, moving equipment to the shop, and transportation for the loader to facilitate each attempt including the final solution, proved to be a major delay in soil remediation efforts. The removal of the wheel loader also delayed the removal of other equipment within the areas of contaminated soils.

Remediation efforts were further delayed when GEC could no longer provide remediation services in a timely manner due to schedule conflicts. This delay was compounded by the need to contract with a new environmental consultant, and to reschedule equipment, skilled labor, and trucking for the contaminated soils.

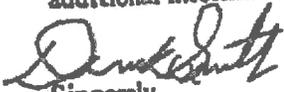
Below is a detailed timeline of soil remediation efforts at the shop facility.

- October 31, 2023: Inspector Michael Kanehl performed an inspection of the facility.
- November 2, 2023: Gantt's contacted the environmental consulting firm GEC and contracted them to remediate the petroleum spill.
- November 6, 2023: Notice of Violation #w23-02-082-mkk was issued. GEC began taking initial soil samples from contaminated areas.
- November 13, 2023: GEC completed taking initial soil samples from contaminated areas. GEC advised Gantt's to remove the wheel loader prior to making remedial excavations. Gantt's began making arrangements to remove the equipment in the area of the contamination per GEC's advisement, and provided an update on the progress of the remediation efforts to Inspector Michael Kanehl.
- April 30, 2024: Inspector Michael Kanehl performed an inspection of the facility.

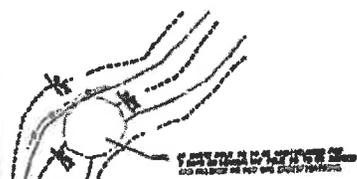
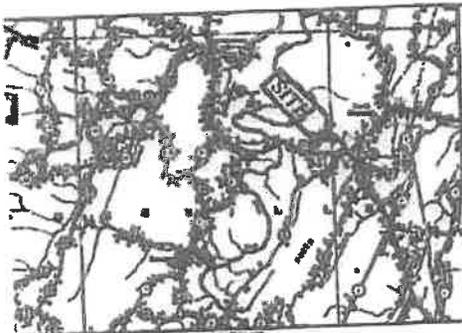
- May 1, 2024: Gantt's had sufficiently removed the equipment in the area of the contamination, and began scheduling GEC to continue with remediation. GEC informed Gantt's that they were no longer able to perform the remediation due to scheduling conflicts. GEC connected Gantt's with Triad Engineering. Gantt's and GEC began informing Triad of the nature of the remediation project.
- May 8, 2024: Triad formally contracted with Gantt's to perform the remediation.
- May 13, 2024: Notice of Violation #w24-02-034-mkk was issued.
- May 14, 2024: Remedial excavations began. Triad oversaw the excavations and took samples. Excavated soils were taken to Clean Earth.
- May 16, 2024: Remedial excavations were completed with the last of the excavated soils taken to Clean Earth. Triad to begin remediation report.
- May 20, 2024: Gantt's began parking equipment in designated areas so that the equipment will be parked with absorbing pads beneath them.
- July 30, 2024: Triad communicated with Gantt's that they have just received the final lab report to complete the remediation report.
- October 2, 2024: The remediation report was received. Inspector Michael Kanehl was included on the emailed report.
- October 31, 2024: Consent Order MM-25-05 was issued.
- January 16, 2025: An in-person meeting between Gantt's Excavating and WVDEP regarding the Consent Order MM-25-05 took place. Gantt's was made aware errors/discrepancies in the remediation report and the nature of them.
- January 17, 2025: Gantt's reached out to Triad via email regarding the errors/discrepancies in the remediation report. Gantt's is expecting a response from them with an update on 02/10/2025.

With exception to addressing the errors/discrepancies in the remediation report provided by Triad and a formal update of the SWPPP for the Shale Pit, Gantt's believes their actions so far have more than adequately addressed the violations as presented in the NOV's. Gantt's is continuing to monitor the stormwater discharges from both facilities, and will notify WVDEP and immediately take action if compliance is not achieved.

Please feel free to reach out with any questions or concerns regarding our responses, or with requests for additional information.

  
Sincerely,

Derick Smith, EIT  
Quality Control Manager  
304-702-2534 (Cell)

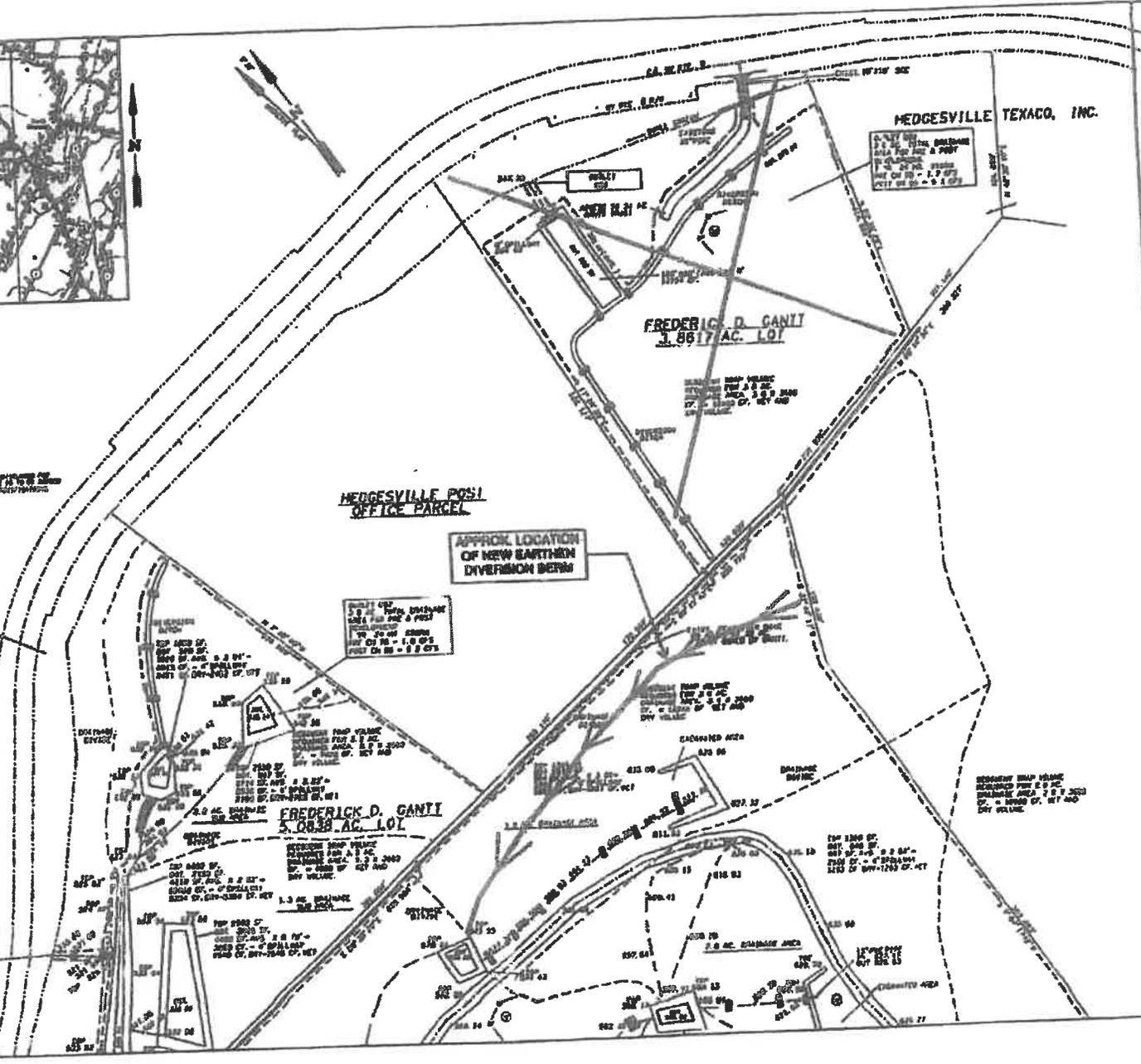


GENERIC WASTE SITE LOCATION

NOTE: THE AREA BETWEEN THE 2 AND THE 3000 AND 3000 AND 4000 ELEVATIONS IS TO BE MAINTAINED AS A WASTE STORAGE AREA.

**LEGEND**

- BOUNDARY IDENTIFICATION DISTANCE
- STONE RIPRAP
- WOOD CHECK DAM
- SCALE FLICK STRUCTURE
- STEEL
- EMT FENCE
- LINE OF CLEARING & GRASSING
- BERM/GRASS DAM
- PERMEABLE DAM
- SEDIMENT BASIN
- SEDIMENT TRAP
- SEDIMENT BASIN WITH TRAP
- BASED PILE (SEE DETAIL)

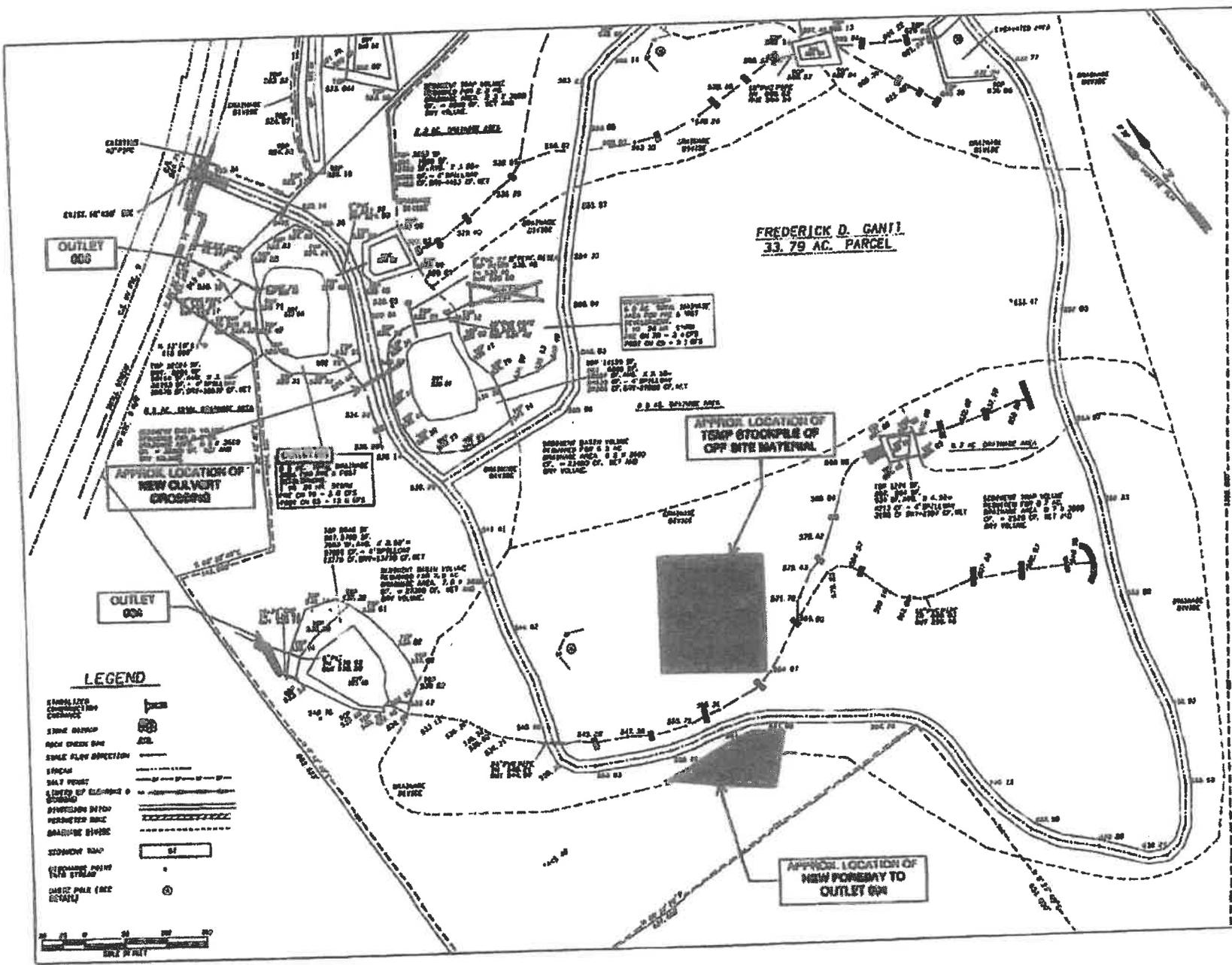


**P**

FREDERICK D. GANTT PROPERTY AND  
SITE PLAN SHOWING SEDIMENT AND  
EROSION CONTROL STRUCTURES  
AND OUTLET POINTS

PROJECT NO.  
DATE  
DRAWN BY  
CHECKED BY  
APPROVED BY

SHEET 1 OF 1



OUTLET 003

FREDERICK D. GANTT  
33.79 AC. PARCEL

APPROX. LOCATION OF  
NEW CULVERT  
CROSSING

APPROX. LOCATION OF  
TEMP STOCKPILE OF  
OFF SITE MATERIAL

**LEGEND**

- STABILIZED CONSTRUCTION CHANNEL
- STONE CHANNEL
- SOFT CHECK DAM
- SINGLE FLOW DIRECTION
- STAKE
- WELL POINT
- CLIFF OF ELEVATION
- PROPOSED DITCH
- PERMANENT DITCH
- GRAVELLE DITCH
- STANDARD ROAD
- UNIMPROVED DRIVE
- EXIST. POLE (SEE DETAIL)



**P C DIMAGNO**  
ENGINEERS - SURVEYORS  
87 EARLE SCHOOL ROAD  
MARTINSDALE, MD 20644-2020  
PHONE: 410-326-1111  
FAX: 410-326-1117

**P**

FREDERICK D. GANTT PROPERTY  
SITE PLAN SHOWING SEDIMENT AND  
EROSION CONTROL STRUCTURES  
AND OUTLET POINTS

DATE	11/11/03
SCALE	AS SHOWN
PROJECT	SEE PLAN
ISSUED BY	PC
REVISION	

SECT 2

## **Appendix C**

## Generic Storm Water Pollution Prevention Plan

1. Provide a description of Potential Pollutant Sources -- (This includes the loading, unloading of dry bulk materials and liquids, outdoor material storage, outdoor process activities, dust generating activities, illicit connections / management practices, waste disposal practices.)

Loading Shale and stockpiled off-site materials onto trucks.  
Stockpiling off-site borrow; primarily stone.  
Oils and fuels in the equipment performing the loading and grading.

2. Enclose a site map which includes each drainage and discharge structure; an outline of the drainage area of each discharge point, each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff; materials loading and access area; each hazardous waste storage or disposal facility; each well where fluids from the facility are injected underground; sinkholes; springs; and other surface water bodies.
3. Provide an estimate of the area of impervious surfaces in square feet. --  
Impervious surfaces include paved, concreted areas and building roofs.  
  
There are no buildings or paved surfaces to impede the absorption of rain water. There is a service road on this site that has been compacted by truck and equipment traffic. The area of the road is approximately 39,896 SF.
4. Enclose a topographic map extending one mile beyond the property boundaries of the facility. This map must show the location of intake and discharge structures, springs, other surface water bodies and drinking water wells.

5. Describe any materials that have been treated, stored, or disposed of in a manner which has led to exposure to storm water. These are the same types of materials as listed under section one (1) above. Describe what steps were taken with these materials to prevent storm water contamination.

A series of sediment traps catch and treat storm water prior to discharging from the site.

6. List all significant spills and leaks of toxic or hazardous pollutants that occurred at the facility after the date of three (3) years prior to coverage under this permit and the present. This list shall include a description of the material released, estimate of volume of the release, location of the release, description of any remediation or cleanup taken.

On August 9, 2024, visibly turbid water was observed discharging from Outlet 003. Additional erosion control measures were added, and storm water discharge quality has improved.

7. Provide a summary of any existing sampling data.

Summary has been provided and is attached.

**Storm Water Management Control** – This is a plan which is part of the SWPPP and is designed to ensure that procedures are in place to ensure that storm water contamination does not become a problem at your facility.

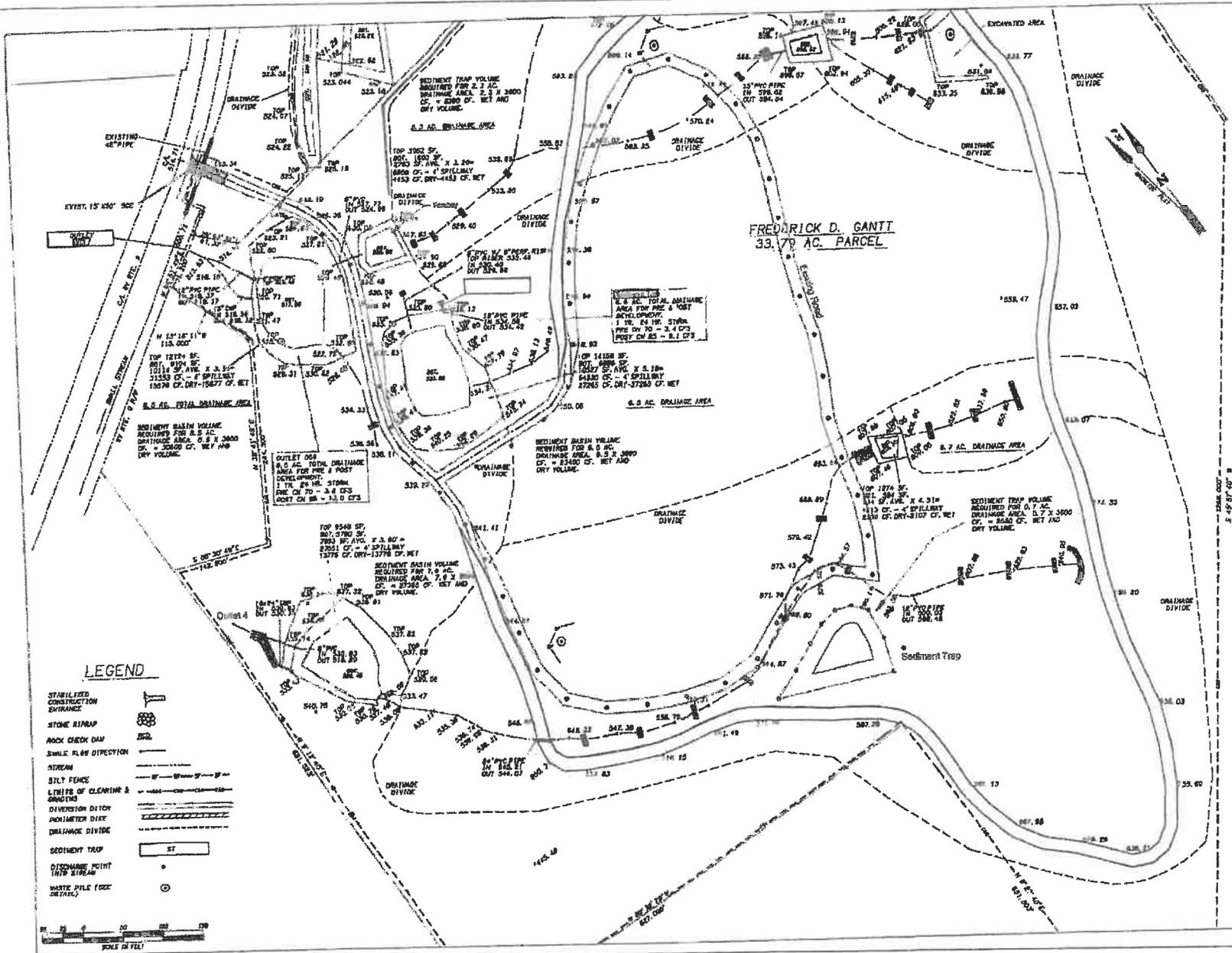
**Sections of the plan.**

1. **Pollution prevention committee** – individuals responsible for the development of the SWPPP and its implementation, maintenance and revision. – List these individuals.

Derick Smith - 304-702-2534  
 Tim Smith - 304-671-0682  
 Troy Nails - 304-671-8532  
 Janesa Smith - 304-671-6459

2. **Risk identification and assessment/Material Inventory** – Inventory the types of materials handled, location of materials, use of materials.

Name of Material	Where Material is stored and or used	Use of Material
Shale	Stored In place	Hauled off as needed
Stockpiled Off-Site Stone	Stored In designated area	Hauled off as needed



**P C DIMAGNO**  
**ENGINEERS - SURVEYORS**  
 61 EAGLE SCHOOL ROAD  
 WARTIMBERS, WY 25404-7532  
 (307)293-0157 FAX: (304)267-0787

NO.	DATE	REVISIONS

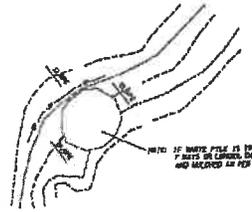
**FREDERICK D. GANTT PROPERTY AND SITE PLAN SHOWING SEDIMENT AND EROSION CONTROL STRUCTURES AND OUTLET POINTS**  
**SHEET 2**

PROJECT NO.	0281
DRAWING NO.	0281-2
DATE	8-23-01
DRAWN BY	MD
CHECKED BY	MD
APPROVED BY	MD

SHEET 2 OF 4



LEGEND  
1" = 50' SCALE

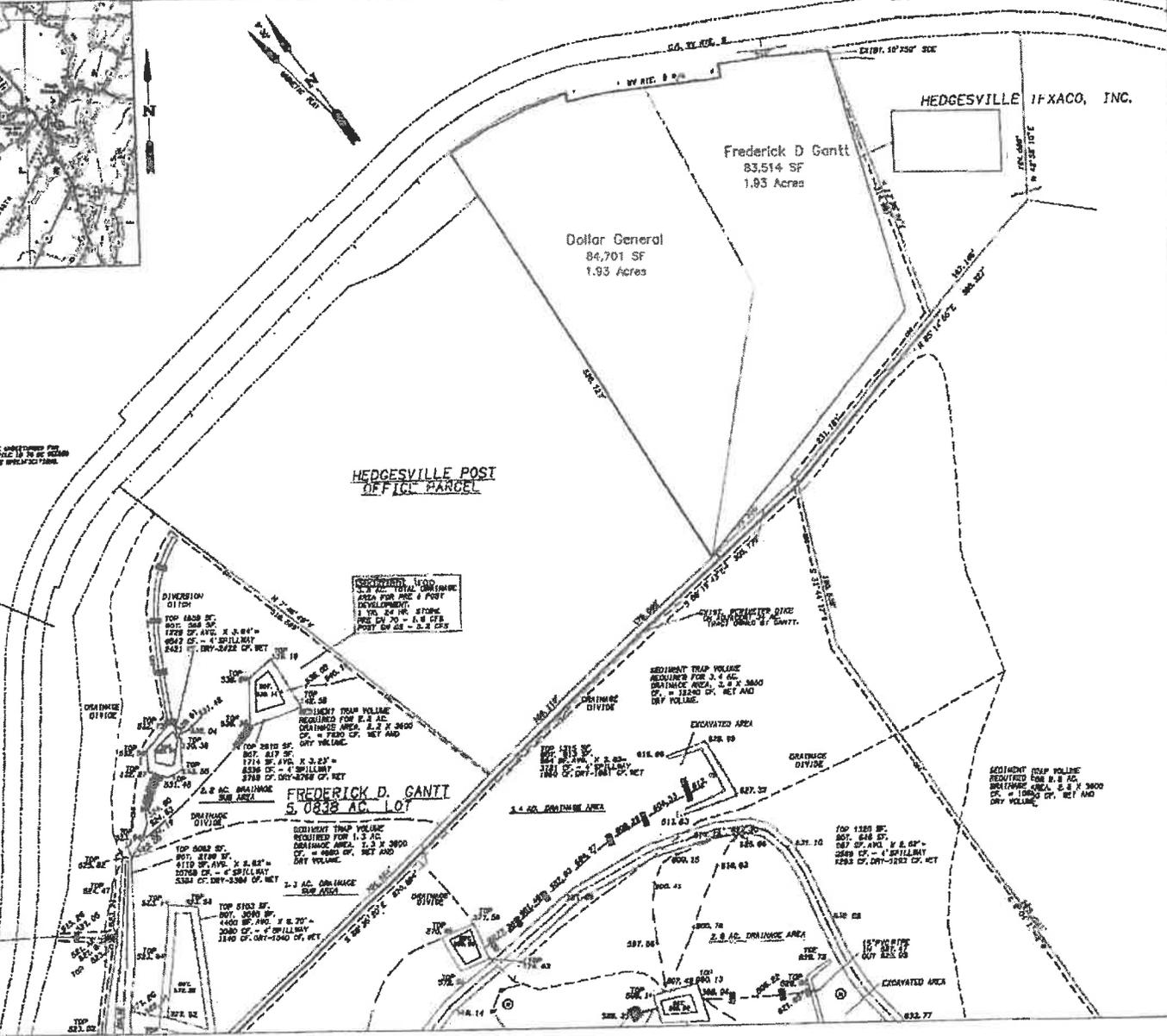


GENERIC WASTE SITE LOCATION  
N.T.S.

NOTE: THE AREA BETWEEN SITE # AND THE STREAM HAS BEEN STABILIZED, SEEDS AND MULCHED AND ARE GROWING.

**LEGEND**

- STABILIZED CONSTRUCTION ENTRANCE
- STONE RIPRAP
- ROCK CHECK DAM
- SMALL FLOW DIRECTION
- STREAM
- WATER PILE
- LIMITS OF CLEARING & BRADING
- DIVERSION DITCH
- PERIMETER DITCH
- DRAINAGE DITCH
- SEDIMENT TRAP
- DISCHARGE POINT INTO STREAM
- WASTE PILE (SEE DETAILS)
- OUTLET DITCH



HEDGESVILLE POST OFFICE PARCEL

FREDERICK D. GANTT  
5.0838 AC. LOT

**P C DINIAGNO**  
**ENGINEERS - SURVYORS**  
61 EAGLE SCHOOL ROAD  
MARTINSBURG, WV 25104-7502  
(304)283-0137 FAX: (304)857-0787



FREDERICK D. GANTT PROPERTY AND  
SITE PLAN SHOWING SEDIMENT AND  
EROSION CONTROL STRUCTURES  
AND OUTLET POINTS  
SHEET 1

PROJECT NO.	100
DRAWING NO.	100-1
DATE	8-13-19
DRAWN BY	JD
CHECKED BY	JD
APPROVED BY	PC
SHEET	1 OF 4

## **Appendix D**

February 20, 2025

Mr. Michael Kanehl  
Environmental Inspector Specialist  
Division of Water and Waste Management - Environmental Enforcement  
22288 Northwestern Pike,  
Romney, West Virginia 26757

Response Letter to WVDEP Comments  
Gantt's Excavating & Contracting, Inc.

**RE:** 2754 Tabler Station Road  
Martinsburg, West Virginia 25403  
Triad Project No. 03-24-0484

Dear Mr. Kanehl

This letter was prepared as a response to your recent comments regarding the Remedial Excavation, Sampling, and Testing Report dated October 30, 2024, that was completed by Triad Engineering, Inc. (Triad) at the above-referenced site.

#### **INTRODUCTION**

Following an Order Meeting held on January 16, 2025, Gantt's Excavating & Contracting, Inc. (Gantt's) and the West Virginia Department of Environmental Protection (WVDEP) discussed concerns regarding Triad's Remedial Excavation, Sampling, and Testing Report dated October 30, 2024. These concerns were subsequently communicated to Mr. Timothy Smith, Gantt's Director of Safety & Human Resources, via email on January 17, 2025.

#### **WVDEP COMMENTS**

**Comment 1 - Samples kept in a refrigerator at Triad business, which does not reflect on the COC.**

- The chain of custody (COC) documents the custodians of the samples. All samples were in the custody of Triad or the laboratory as documented by the COCs. Normally, as was the case here, the samples collected by Triad are stored in dedicated analytical sample refrigerators at the Triad offices until the laboratory couriers arrive to take possession, sign the COC, and transport the samples to the laboratory for analysis.

**Response Letter to WVDEP  
Comments**

**Comment 2 - Is the refrigerator secured?**

- The dedicated analytical sample refrigerator at the Triad office located at 200 Aviation Drive, Winchester, Virginia 22602, which was used for the soil samples submitted to Pace Analytical, is locked inside the Environmental Room. The building and the Environmental Room are only accessible to authorized personnel.
- The soil samples submitted to Eurofins were placed in the dedicated analytical sample refrigerator at the Triad office located at 1075-D Sherman Avenue, Hagerstown, Maryland 21740, which is located inside the secured building and is only accessible to authorized personnel.

**Comment 3 - Samples kept in the refrigerator for days.**

- Samples are stored in the dedicated analytical sample refrigerators until the laboratory courier arrives to take possession and deliver the samples to the laboratory.

**Comment 4 - Samples out of hold times (page 6 Eurofins Report).**

- All soil samples for the Eurofins laboratory report were analyzed within the proper hold times. Page 6 of the Eurofins laboratory report states that six soil containers for three soil samples were received at the laboratory outside of the required temperature criteria. As explained by Eurofins, the Eurofins courier apparently did not have sufficient ice in the coolers to maintain the correct temperature while transporting the samples.

**Comment 5 - Number of samples submitted to Eurofins did not match COC (page 6 Eurofins Report).**

- Soil samples from seven sampling locations were submitted to Eurofins for analysis. Six soil containers were submitted for each of the seven soil sampling locations but four containers were incorrectly listed on the COC. In summary, the laboratory received the correct quantity and type of sample containers necessary to perform the requested analyses.

**Comment 6 - Sample 8 had foam in the sample. Why was foam in the sample? (page 6 Eurofins Report).**

- As explained by Eurofins, foaming is generally caused by either a surfactant or high organic content. Either of these may cause the sample to foam when the purging process is performed, but Eurofins was unable to identify the foaming source.

**Response Letter to WVDEP  
Comments**

- Due to the foaming at the time of purging, Sample 8 was diluted during the sample analysis thus producing elevated reporting limits (RLs). However, the elevated RLs were below the WVDEP Corrective Action Guidance Document (CAGD) for Leaking Aboveground Storage Tanks (ASTs) and Underground Storage Tanks (USTs) Tier 1 Cleanup Levels.

**Comment 7 - The report does not have information of the size of the excavated areas.**

- Section 3.0 of the report states that a minimum of one soil sample was collected at the bottom of each excavation that did not exceed approximately three feet in diameter. For excavations larger than three feet in diameter, soil samples were collected at the bottom and sidewalls of the excavation. Excavation depths ranged from six inches to four feet below ground surface.

**Comment 8 - Arsenic levels above limits in 3 samples.**

- Per Section 12.2 of the CAGD, Triad completed a statistical evaluation of the Arsenic concentrations in the 58 soil samples to calculate the 95% upper confidence limit (UCL) to demonstrate compliance as tabulated below.

Concentration Range	Concentration Mean	Concentration 95% UCL
4.2-25.2 mg/kg	11.03 mg/kg	12 mg/kg

- As specified in Section 12.2.3 of the CAGD, the 95% UCL must be less than the soil action level. The 95% UCL of 12 mg/kg is less than the Arsenic Tier 1 Cleanup Level of 18 mg/kg.

**CONCLUSION**

Per Section 5.0 of the report, it is Triad's opinion that no further remedial excavation is warranted.

If you have any questions or additional concerns regarding the Remedial Excavation, Sampling, and Testing Report dated October 30, 2024, please don't hesitate to contact us at 301-797-6400.

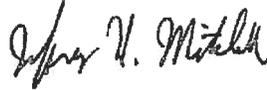
Respectfully submitted,

Response Letter to WVDEP  
Comments

**TRIAD ENGINEERING, INC.**



Kainen M. Marks  
Project Geologist



Jeffrey H. Mitchell, CPG, LRS  
Senior Environmental Geologist

MADE IN THE USA

CEP



9589 07

TO: C En V G

FROM:

Grant H's Excavating

PO BOX 974

Martinsburg, WV 25402

**PRIORITY MAIL**

**TRACKED INSURED**

**UNITED STATES POSTAL SERVICE**

For Domestic and International Use

Label 1079, April 2014



5/15/25, 10:00 AM









5/15/25, 9:57 AM











February 20, 2025

Mr. Michael Kanehl  
Environmental Inspector Specialist  
Division of Water and Waste Management - Environmental Enforcement  
22288 Northwestern Pike,  
Romney, West Virginia 26757

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Gantt's Excavating & Contracting, Inc.

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**Response Letter to WVDEP  
Comments**

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- The soil samples submitted to Eurofins were placed in the dedicated analytical sample refrigerator at the Triad office located at 1075-D Sherman Avenue, Hagerstown, Maryland 21740, which is located inside the secured building and is only accessible to authorized personnel.

**Comment 3 - Samples kept in the refrigerator for days.**

- Samples are stored in the dedicated analytical sample refrigerators until the laboratory courier arrives to take possession and deliver the samples to the laboratory.

**Comment 4 - Samples out of hold times (page 6 Eurofins Report).**

- All soil samples for the Eurofins laboratory report were analyzed within the proper hold times. Page 6 of the Eurofins laboratory report states that six soil containers for three soil samples were received at the laboratory outside of the required temperature criteria. As explained by Eurofins, the Eurofins courier apparently did not have sufficient ice in the coolers to maintain the correct temperature while transporting the samples.

**Comment 5 - Number of samples submitted to Eurofins did not match COC (page 6 Eurofins Report).**

- Soil samples from seven sampling locations were submitted to Eurofins for analysis. Six soil containers were submitted for each of the seven soil sampling locations but four containers were incorrectly listed on the COC. In summary, the laboratory received the correct quantity and type of sample containers necessary to perform the requested analyses.

**Comment 6 - Sample 8 had foam in the sample. Why was foam in the sample? (page 6 Eurofins Report).**

- As explained by Eurofins, foaming is generally caused by either a surfactant or high organic content. Either of these may cause the sample to foam when the purging process is performed, but Eurofins was unable to identify the foaming source.

**Response Letter to WVDEP  
Comments**

- Due to the foaming at the time of purging, Sample 8 was diluted during the sample analysis thus producing elevated reporting limits (RLs). However, the elevated RLs were below the WVDEP Corrective Action Guidance Document (CAGD) for Leaking Aboveground Storage Tanks (ASTs) and Underground Storage Tanks (USTs) Tier 1 Cleanup Levels.

**Comment 7 - The report does not have information of the size of the excavated areas.**

- Section 3.0 of the report states that a minimum of one soil sample was collected at the bottom of each excavation that did not exceed approximately three feet in diameter. For excavations larger than three feet in diameter, soil samples were collected at the bottom and sidewalls of the excavation. Excavation depths ranged from six inches to four feet below ground surface.

**Comment 8 - Arsenic levels above limits in 3 samples.**

- Per Section 12.2 of the CAGD, Triad completed a statistical evaluation of the Arsenic concentrations in the 58 soil samples to calculate the 95% upper confidence limit (UCL) to demonstrate compliance as tabulated below.

Concentration Range	Concentration Mean	Concentration 95% UCL
4.2-25.2 mg/kg	11.03 mg/kg	12 mg/kg

- As specified in Section 12.2.3 of the CAGD, the 95% UCL must be less than the soil action level. The 95% UCL of 12 mg/kg is less than the Arsenic Tier 1 Cleanup Level of 18 mg/kg.

**CONCLUSION**

Per Section 5.0 of the report, it is Triad's opinion that no further remedial excavation is warranted.

If you have any questions or additional concerns regarding the Remedial Excavation, Sampling, and Testing Report dated October 30, 2024, please don't hesitate to contact us at 301-797-6400.

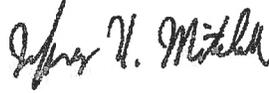
Respectfully submitted,

Response Letter to WVDEP  
Comments

**TRIAD ENGINEERING, INC.**



Kainen M. Marks  
Project Geologist



Jeffrey H. Mitchell, CPG, LRS  
Senior Environmental Geologist



PO Box 974  
Martinsburg, WV 25402  
304-229-6515

February 13, 2026

Brad Wright, Chief Inspector  
Environmental Enforcement – Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304

RE: POCA Denial Response Letter  
Revised POCA

Dear Mr. Wright:-

Gantt's Excavating & Contracting, Inc. received the POCA Denial letter dated January 16, 2026, on January 21, 2026. Gantt's has sought, but not yet received, a more specific factual basis for determinations made in the January 16, 2026, letter and is thereby limited in its ability to respond. Gantt's is in the process of appealing said action by the DEP and will request a stay pending resolution of the appeal. However, in the meantime, to avoid sanctions by the DEP, Gantt's respectfully acknowledges receipt of the January 16, 2026, letter and responds to each comment together with our remedial measures/actions taken to address them:

**Comment:** *The Stormwater Pollution Prevention Plan (SWPPP) provided as Appendix C to the proposed POCA is incomplete and missing several required pages. An approvable POCA would include a complete SWPPP with all required information.*

**Response:** Please find enclosed SWPPP approved by WVDEP.

**Comment:** *The proposed POCA does not provide for adequate controls at Outlets 003 and 004 to prevent further occurrences of sediment laden water reaching the stream. Site visits conducted on March 17, 2025, and May 15, 2025, indicated that Conditions Not Allowable was occurring at and downstream of the Outlets. An approvable POCA would include additional controls that will prevent future occurrences of Conditions Not Allowable.*

**Response:** Gantt's has investigated and will continue to investigate the WVDEP's findings from March 17 and May 15, 2025, as well as the photographs provided, to ensure that Conditions Not Allowable do not occur.

**Comment:** *The proposed POCA includes correspondence, date February 20, 2025, that was prepared as a response to WVDEP's comments regarding the Remedial Excavation, Sampling, and Test Report, which was originally provided to WVDEP in October 2024. Upon review of the correspondence, WVDEP personnel have determined that the sample results do not provide sufficient confirmation that proper remediation of the affected areas has been achieved. Multiple discrepancies, such as errors on the chain of custody form and samples held outside of the required temperature criteria, necessitate that a resampling event be conducted. As such, an approvable PCOA would*



*include detailed provisions and a schedule for conducting the resampling event and for submitting a report to WVDEP that includes, at a minimum, a comparison of the sample results to appropriate standards, such as Tier 1 Action Levels outlined in the WVDEP Corrective Action Guidance Document. Among other requirements, an approvable resampling event would involve taking borings that are deeper than the borings for the previous sampling event and utilizing a PID to ensure that samples are taken at the depth of the highest reading. Lastly, an approvable POCA would include provisions and a schedule for submitting a Supplemental POCA that would detail additional remediation measures, should results from the resampling event indicate that contamination is still present in the affected areas.*

**Response:** Gantt's has consulted and will continue to consult with its experts at Triad Engineering to ensure that no contamination of the receiving stream occurs. Gantt's has also implemented measures to prevent any further oil from being deposited onto the soil.

Please feel free to reach out to me with any questions or concerns regarding our responses.

Sincerely,



Derick Smith, EIT  
Quality Control Manager  
304-702-2534 (Cell)  
[dsmith@ganttsexcavating.com](mailto:dsmith@ganttsexcavating.com)

Encl: as stated

cc: Samantha Blair, via US First class mail and email ([Samantha.n.blair@wv.gov](mailto:Samantha.n.blair@wv.gov))

January 30, 2026

Mr. Derick Smith  
Quality Control Manager  
Gantt's Excavating & Contracting, Inc.  
2754 Table Station Road  
Martinsburg, West Virginia 21740

**RE: Proposal for Supplemental Resampling Services**  
Gantt's Excavating & Contracting, Inc.  
2754 Tabler Station Road  
Martinsburg, West Virginia 25403  
Triad Project No. 03-26-0074

Dear Mr. Smith:

In response to your request, Triad Engineering, Inc. (Triad) is pleased to submit this proposal to provide services to perform supplemental resampling services for the above-referenced site. This proposal outlines our anticipated scope of services and provides an estimate of the fees and time frame for performing these services.

**INTRODUCTION**

The Client provided Triad with a copy of a West Virginia Department of the Environment (WVDEP) Response letter dated January 16, 2026. The response letter stated that WVDEP found that the previous remediation event performed in May 2024 was insufficient to confirm proper remediation was achieved. The WVDEP requested that a supplemental resampling of the soil in the remediated areas be provided to the WVDEP.

**PROPOSED SCOPE OF SERVICES**

**Task 1 - General Consulting and Technical Assistance**

Triad personnel will participate in conference calls, perform a site visit, contact the West Virginia Department of Environmental Protection (WVDEP), and attend site meetings with the WVDEP (if required) and deemed appropriate to fulfill WVDEP requirements. The purpose of these activities is to develop a Sampling and Analysis Plan (SAP) for approval by the WVDEP.

The fee for this task is based on an estimated number of manhours and an estimated allowance for reimbursables such as mileage. Unanticipated circumstances and/or services exceeding this estimate will require additional fees through a change order. For example, if during the site visit,



there is evidence of any new spill, release, or discharge where prior soil remediation activities were conducted in May 2024, additional services to address these new concerns will require a change order.

### **Task 2 - Sampling and Analysis Plan (SAP) Development**

Triad will develop a SAP for resampling the remediated areas at the site. The SAP will specify the procedural and analytical requirements for the collection of soil, water, and/or other media (if required) to characterize previously remediated areas of the site. The purpose of the SAP is to confirm that the previous remediation activities performed in May 2024 were achieved. Once the SAP has been reviewed and approved by the client, Triad will submit the SAP to the WVDEP for approval.

The fee for development of the SAP and initial submittal to the WVDEP will be charged as a lump sum. Any significant revisions thereafter will be performed on a time and materials basis at Triad's standard rates.

### **Task 3 - Suggested SAP Scope of Work**

The suggested scope of services for the SAP is as follows; however, it is emphasized that there is no defined approach for what the WVDEP will require, and this scope will be proposed to the WVDEP for review and comment. As a result, the scope and fees for this task are estimated. Should the WVDEP require additional sampling, testing, reporting, etc., beyond this scope below, these additional items will be submitted for review and approval through a change order.

- Triad will notify the WVDEP at least 10 business days before beginning the field activities for the SAP.
- Triad will submit a Location Request to "West Virginia 811", who will mark the public utilities at the property. However, it is the client's responsibility to identify the location of any private utilities. Triad will not be responsible for any damages that may result from striking underground utilities during the subsurface exploration. A Triad Environmental Scientist will be onsite to oversee a subsurface investigation utilizing a pneumatic direct push soil boring/sample acquisition system (i.e., Geoprobe). Triad proposes to perform five (5) direct-push exploratory borings in each of the seven (7) Areas of Concern (AOC) as shown on the attached AOC plan. These borings will be advanced where "Spills" were previously remediated. The exploratory borings will be advanced until residual soil is encountered, refusal, and/or to a termination depth of five (5) feet below ground surface (bgs). It is noted that all prior May 2024 excavation/remediation, confirmation soil sampling, occurred from a surface to a maximum depth of four (4) feet bgs. Borings will be backfilled with the soil cuttings.
- Two soil samples, one surface soil (0-2 feet) and one subsurface (2-5 feet) soil sample, will be collected from each boring and placed in dedicated field containers for field screening. The soil samples will be field screened for the presence of total volatile

organic compounds (VOCs) utilizing a photo-ionization detector (PID). In addition, due to the nature of hydraulic fluid and the lack of VOCs, visual and olfactory indicators will be recorded. If there is obvious contamination from a release (e.g., stained soils) a sample will be collected from this area. Following the field screening of the soil samples, a maximum of two soil samples, one from the surface zone and one from the subsurface zone, will be selected from each AOC for analytical testing. The two representative soil samples will be selected based on the highest likelihood for potential petroleum contamination based on PID results, olfactory, and visual indicators. The 14 soil samples selected for analytical testing will be containerized in laboratory-provided sample containers and will be submitted under chain of custody protocols to a West Virginia-certified laboratory for the following analyses:

- Benzene, Toluene, Ethylbenzene, and Xylenes (BTEX) by U.S. EPA Method 8260/5035 and
- Polynuclear Aromatic Hydrocarbons (PAHs) by U.S. EPA Method 8270SIM
- Triad will collect one unfiltered groundwater sample from the existing drinking water well at the site. The water sample will be submitted under chain of custody protocols to a West Virginia-certified laboratory for the following analyses:
  - Total Compound List (TCL) for Volatile Organic Compounds (VOCs) via EPA Method 524.1
- Samples will be stored in a dedicated analytical sample refrigerator at the Triad office, located at 1075-D Sherman Avenue, Hagerstown, Maryland 21740, inside the secured building and accessible only to authorized personnel. A laboratory-designated courier will then pick up samples.
- Standard laboratory turnaround time (TAT) of 10-12 business days will be requested from the laboratory.

#### **Task 4 - Supplemental Sampling Report**

A supplemental sampling report of the assessment activities, direct push boring log, and laboratory testing will be provided as a .pdf file following receipt of the laboratory results. The report will include an AOC Determination Table that will list the exploratory soil boring data, PID results, visual, and olfactory indicators. In addition, an analytical "hits only" results summary table will be developed and compared to the WVDEP Tier 1 Soil Action Levels published in the West Virginia Corrective Action Guidance Document (CADG) for Leaking Aboveground Storage Tanks and Underground Storage Tanks, dated July 2018. Any consultation regarding findings and/or revisions to the report after it has been issued will be subject to our standard rates and hourly fees.

#### **ESTIMATED FEES**

The fees for our services will be based on our standard rates and the actual quantities of work performed, but billed as lump sums. Payment terms are net 30 days. Based on the scope of work described herein, we estimate the following fees.

Task	Description	Fee
1	General Consulting and Technical Assistance	\$2,850.00
2	Sampling and Analysis Plan (SAP) Development	\$1,450.00
3	Suggested SAP Scope of Work	\$5,815.00
	Laboratory Analysis (Standard TAT)	\$3,385.00
4	Supplemental Sampling Report	\$2,675.00
	<b>ESTIMATED TOTAL FEE:</b>	<b>\$16,175.00</b>

#### NON-SCOPE SERVICES

If evidence (visual, olfactory, field screening, analytical data, etc.) of a reportable release is found in the form of contaminated soils, or free product as a liquid or vapor, it is the responsibility of the property owner to report the release immediately to the WVDEP spill line at 1-800-642-3074.

Any additional equipment, materials, services, sampling, and/or WVDEP coordination that is not proposed in Tasks 1-4 of this proposal will be charged on a T&M basis according to our standard rates and 15% for any outside services.

#### SCHEDULE

Our workload at the time of authorization, coordination efforts with the WVDEP, and weather/snow cover will have some influence on project commencement and the overall schedule, but typically, we can initiate field services within 5-10 business days of receiving formal notice to proceed. We anticipate that the WVDEP coordination efforts will require 30 - 45 business days. Should the suggested SAP be approved by the WVDEP, field activities will require approximately one day, and laboratory testing will require approximately 10 - 12 business days. The Supplemental Sampling Report can be prepared within 10 -15 business days following receipt of the analytical laboratory report. It is emphasized that this schedule is an estimate, and it is based on normal workloads, appropriate weather conditions, and WVDEP's willingness to provide guidance for the SAP.

#### AUTHORIZATION

This proposal represents the understanding between Triad and the client in regard to the referenced project and will remain open for a period of 60 days from this date. If our scope of services and related fees are acceptable, please complete, sign, and return the attached Professional Services Agreement. Our receipt of the signed Professional Services Agreement and deposit will constitute formal notice to proceed.

Triad Engineering, Inc. appreciates the opportunity to submit this proposal, and we look forward to working with you on this project. If you have any questions or require any additional information, please do not hesitate to contact us.

Sincerely,

**TRIAD ENGINEERING, INC.**



Kainen M. Marks  
Project Geologist



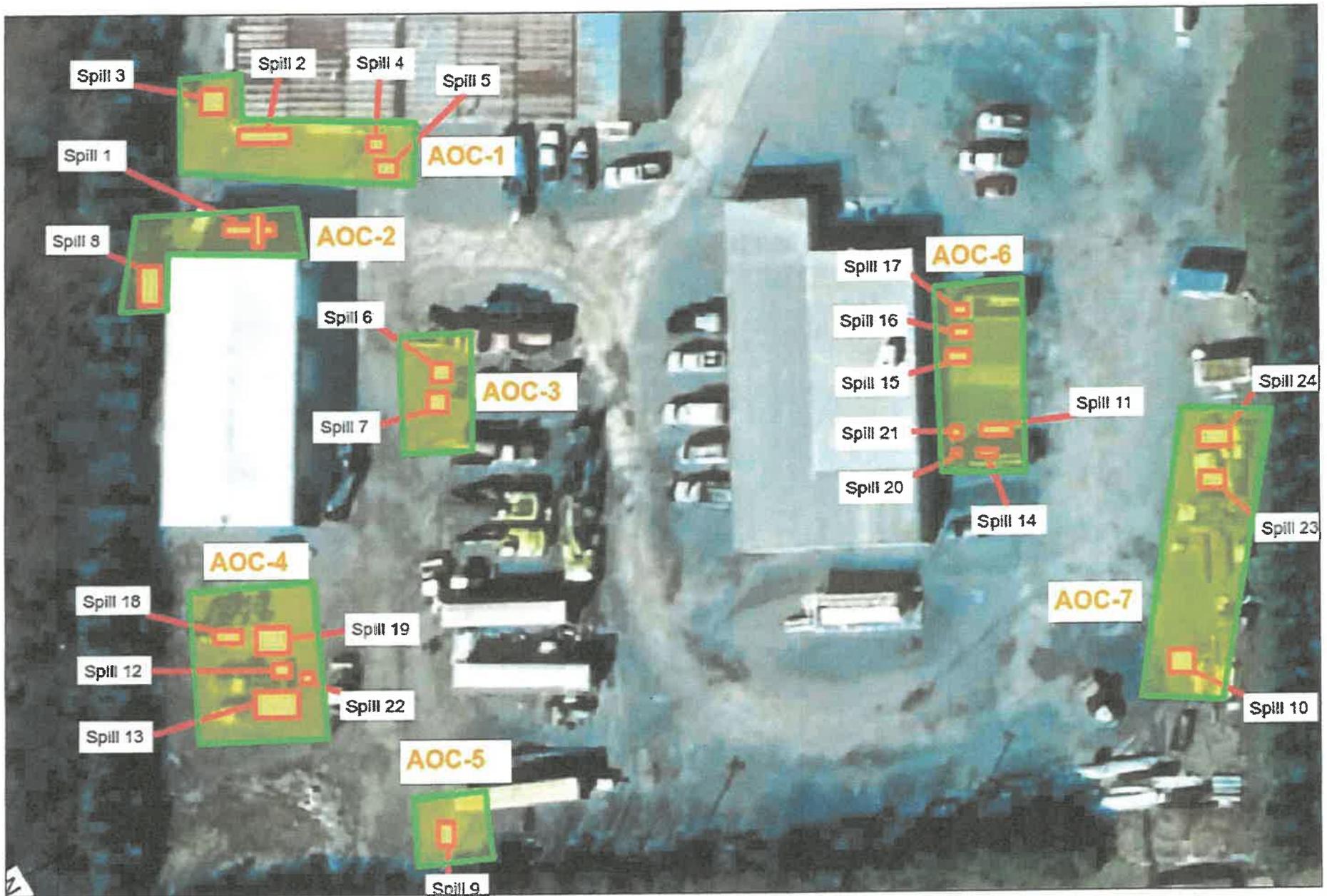
Patrick Upham  
Environmental Services Manager

Attachment:  
Proposed Sample Location Plan  
Professional Services Agreement (PSA)



**Site Vicinity Map**  
Gantt's Excavating & Contracting, Inc.  
2754 Tabler Station Road  
Martinsburg, West Virginia 25403





**Areas of Concern 1-7**  
 Gantt's Excavating & Contracting, Inc.  
 2754 Tabler Station Road  
 Martinsburg, West Virginia 25403



**TRIAD ENGINEERING, INC.  
PROFESSIONAL SERVICES AGREEMENT  
GEOTECHNICAL AND ENVIRONMENTAL SERVICES**

This agreement is entered into by Triad Engineering, Inc. (Triad) and the Client as identified below. Client accepts and hereby engages Triad to perform certain professional services as set forth in the Scope of Work of Triad Proposal No. 03-26-0074 dated 8/19/2021, the terms of which are incorporated herein by reference. In consideration for Triad's professional services, Client agrees to be bound by the terms and conditions of this Agreement.

**ACCEPTANCE AND AGREEMENT TO TERMS AND CONDITIONS**

By his or her signature below, signer affirmatively represents that he or she:

- A. Is an authorized agent and representative of Client;
- B. Has full actual authority to sign this Agreement for and on behalf of Client;
- C. Has read and fully understood the terms and conditions of this Agreement;
- D. Is authorized by Client to bind Client to the terms and conditions of this Agreement, including but not limited to the Financial Responsibility set forth in Paragraph 1 – Payment Terms; and,
- E. That Client is fully aware of the terms and conditions of this Agreement.

**ACCEPTED AND AGREED ON BEHALF OF TRIAD CLIENT:**

Full Legal Name of Triad Client: \_\_\_\_\_

Typed/Printed Name of Signatory: \_\_\_\_\_

Position/Title of Signatory: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**BILLING INFORMATION (Please complete the following to assist us in proper invoicing):**

Project Site Physical Address: \_\_\_\_\_  
\_\_\_\_\_

Triad Client Billing Address: \_\_\_\_\_  
\_\_\_\_\_

Invoicing Contact Name: \_\_\_\_\_

Invoicing Contact Phone: \_\_\_\_\_ Facsimile Number: \_\_\_\_\_

Invoicing Contact Email Address: \_\_\_\_\_

PO Number or Other Reference: \_\_\_\_\_

Special Instructions for Invoicing: \_\_\_\_\_  
\_\_\_\_\_

## TERMS AND CONDITIONS

1. **PAYMENT TERMS:** For Clients without prior credit approval by Triad, Client agrees to pay to Triad a retainer of not less than one-half of Triad's estimated project fee prior to Triad beginning work. Payment in full of the remaining balance is due at the time the project is complete, and prior to Triad providing deliverables to Client or as otherwise agreed in writing.

For Clients with credit approval by Triad, payment is due upon receipt of Triad's invoice. However, payment terms are at the discretion of Triad and are contingent upon credit approval, payment history, or other factors considered relevant by Triad. Payment terms may change as factors considered relevant by Triad change. If payment is not received within thirty (30) days from the invoice date, the principal amount of the invoice shall be considered past due. Client agrees to pay a late fee equal to 1.5% per month of the past due principal amount. In the event any amount is past due more than 45 days from the last day services were provided by Triad to the project, Client acknowledges that Triad must take steps necessary to protect its interests by filing such liens as are permitted by law. In the event such undertaking is necessary, Client agrees to reimburse Triad all costs of these activities, including but not limited to attorney fees, court costs and expenses. In the event of non-payment, Client also agrees to compensate Triad for all costs of collection, including but not limited to attorney fees, court costs and expenses, in addition to all late fees accrued as of the date of final collection.

2. **CHANGES TO SCOPE OF WORK:** Client understands and agrees that the fee proposed by Triad to complete the Scope of Work is an estimate based on Triad's understanding of the required Scope of Work at the time the proposal was prepared. In the event Triad discovers that the Scope of Work required to complete the project varies from that originally understood by Triad, Triad will provide to Client a Change Order to authorize the additional services and associated changes to estimated project fees and schedule. Client understands and agrees that it may be necessary and beneficial to Client for Triad to perform additional work beyond that set forth in the original Scope of Work, and that it may be necessary to begin/perform the additional work prior to Client's execution of the Change Order. Client agrees to not unreasonably withhold approval of a necessary Change Order.
3. **INSURANCE:** Triad maintains Workers' Compensation and Employer's Liability Insurance in conformance with applicable state law. In addition, Triad maintains Comprehensive General Liability Insurance and Automobile Liability Insurance with bodily injury and property damage limits of \$2,000,000. A certificate of insurance can be supplied evidencing such coverage which contains a clause providing that fifteen days written notice be given prior to cancellation. The cost of the above coverage is included in Triad's quoted fees. If additional coverage or increased limits of liability are required, Triad will endeavor to obtain the requested additional insurance and Client agrees to pay the costs and premiums associated with additional coverage or increased limits requested by Client.
4. **STANDARD OF CARE:** Triad makes no warranty or guarantee in connection with the services performed hereunder. Triad will use that degree of care and skill ordinarily exercised under similar conditions by reputable members of Triad's profession practicing in the same or similar locality. No warranty, expressed or implied, is made or intended by Triad's proposal for consulting services or by the furnishing of oral or written opinions or reports.
5. **LIMITATION OF PROFESSIONAL LIABILITY:** Client agrees that Triad's liability for any damage on account of any error, omission or other professional negligence will be limited to a sum not to exceed \$50,000 or Triad's fee, whichever is greater. If higher limits of professional liability are desired, Client should discuss the acquisition of additional liability coverage and corresponding charges involved with Triad prior to signing this document. In the event that Client makes a claim against Triad for any alleged error, omission or other act allegedly arising from Triad's professional service, and the Client fails to prove such a claim, then Client shall pay all attorney fees and other costs incurred by Triad in defending itself against the claim.
6. **WAIVER OF CONSEQUENTIAL DAMAGES:** To the fullest extent permitted by Laws and Regulations, Client and Triad waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of

income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

7. **INDEMNIFICATION:** Client agrees to indemnify and hold Triad, its officers, directors and employees harmless against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by negligent acts of Client and/or Client's employees, subcontractors or anyone for whom Client is legally liable.
8. **OWNERSHIP OF DOCUMENTS:** All original documents, including, but not limited to drawings, specifications, reports, field notes, calculations and estimates, prepared by Triad as instruments of service pursuant to this Agreement, shall be the sole property of Triad. Client further agrees that under no circumstances shall any documents produced by Triad pursuant to this Agreement be used at any location or for any project not expressly provided for in this Agreement without the written permission of Triad. At the request and expense of Client, Triad will provide Client with copies of documents created in the performance of the work for a period not exceeding five years following submission of the work contemplated by this Agreement. All legal instruments related to boundary surveying, including plats of survey, meets and bounds descriptions, etc., shall be maintained indefinitely.
9. **DELAYS:** In the event that the work is interrupted due to causes beyond the control of Triad, Triad shall be compensated for the labor, equipment and other costs incurred to maintain its work force for Client's benefit during the interruption, or at Client's option, the various costs for demobilization and subsequent re-mobilization. Compensation to Triad shall be based upon Triad's prevailing fee schedule and expense reimbursement policy. Except for the foregoing provision, neither party shall hold the other responsible for damages or delays in performance caused by acts of God or other circumstances beyond the control of either party which were not reasonably foreseeable. For purposes of this Agreement, acts of God and other circumstances include, but are not necessarily limited to, unusual weather, floods, epidemics, war, riots, strikes, lockouts or other industrial disturbances, protest demonstrations, unanticipated site conditions, or inability - despite reasonable diligence - to supply personnel, equipment or material to the project. Should such acts occur, Client and Triad shall utilize their best efforts to overcome the resulting difficulties and resume conduct of services called for herein as soon as reasonably possible. Delays within the scope of this provision that cumulatively exceed thirty (30) calendar days shall, at the option of either party, make this Agreement subject to renegotiation or termination.
10. **RESPONSIBILITIES OF THE CLIENT:** Client agrees to provide all information in its possession, custody, or control which relates to the site, its present and prior uses, or to activities at the site which may bear upon the services of Triad under this Agreement, including, but not limited to, the following:
  - a. a legal description of the site, including boundary lines and a site plan;
  - b. historical information as to the prior owners and uses of the site;
  - c. identification of the location of utilities, underground tanks, and other structures and the routing thereof at the site, including available plans of the site;
  - d. a description of activities which were conducted at the site at any time by the Client or by any person or entity which would relate to the services provided by Triad; and
  - e. identification, by name and/or Material Safety Data Sheets, quantity, location, and date, of any releases or handling of regulated and/or toxic/hazardous substances.
11. **RIGHT-OF-ENTRY:** If necessary to complete the Work, Client shall furnish Triad right-of-entry to the project site. Triad will take reasonable precautions to minimize damage to the property caused by Triad operations, but Triad does not include in its fee the cost of restoring damage which may result, unless explicitly stated in the Scope of Work. If Client desires Triad to restore the property to a condition equal to its former condition, such work shall be specifically stated in the Scope of Work, and costs assigned accordingly. In no case shall Triad be liable for damages caused by others during or subsequent to Triad's operations, including damages arising from trespass facilitated by developing access to the property by Triad.
12. **DAMAGE TO EXISTING MAN-MADE OBJECTS:** It shall be the responsibility of the Client or his duly authorized representative to disclose the presence and accurate location of all hidden or obscure man-made objects at or near test, sample or boring locations. If Triad is provided data in writing as to the presence or potential presence of underground or above ground obstructions, such as utilities, Triad will give special instructions to its

field personnel. Client agrees to indemnify and hold Triad harmless from all claims, suits and losses from personal injury, death and property liability damage resulting from unanticipated subsurface conditions, including damage to subsurface structures owned by the Client or third parties, and which occur during, or as a result of, the performance of authorized services by Triad, including but not limited to Triad's legal expenses and costs and any other damage incurred by Triad as a result thereof. If requested by Client in writing, Triad agrees to notify appropriate utility location services in an attempt to identify possible underground utilities at the site prior to the initiation of subsurface exploration activities. The Client, however, retains the responsibility to disclose to Triad the presence and accurate location of any underground utilities or man-made objects which may, or may not, be identified or located at the site by appropriate utility location services, but which are known to exist by the Client.

- 13. SAMPLING OR TESTING LOCATION:** Unless otherwise specifically stated in the Scope of Work, Triad's estimated fees do not include costs for determining accurate horizontal and vertical locations of tests, samples or borings. Therefore, locations described in Triad's reports or shown on sketches are based on information furnished by Client or others, or estimates made by Triad's authorized representatives. Such dimensions, depths, or elevations should be considered as approximations unless otherwise stated in writing by Triad.
- 14. UNCONTAMINATED SAMPLE DISPOSAL:** Unless otherwise requested, uncontaminated test specimens or samples may be disposed of immediately upon completion of tests. Upon written request, Triad will retain test specimens or samples for a mutually acceptable storage charge and period of time.
- 15. SAFETY:** Should Triad provide services at a project site where active construction, manufacturing, or other activity is occurring which could result in health or safety hazards, Client agrees that, in accordance with generally accepted practices, the Client will be solely and completely responsible for safe working conditions on the job site. This includes safety of all persons and property during the performance of the work and compliance with OSHA regulations. These requirements will apply continuously and not be limited to normal working hours. Any monitoring of Client's construction contractor procedures conducted by Triad is not intended to include review of the adequacy of the contractor's safety measures in, on, adjacent to, or near the site.
- 16. DISCOVERY OF UNANTICIPATED REGULATED AND/OR TOXIC/HAZARDOUS MATERIALS:** Triad and Client agree that the discovery of unanticipated regulated and/or toxic/hazardous materials constitutes a changed condition mandating renegotiation of the Scope of Work or termination of services. Triad and Client agree that the discovery of such unanticipated materials will make it necessary for Triad to take immediate measures to protect human health and safety, and/or the environment. Triad agrees to notify Client as soon as practically possible should unanticipated materials or suspected materials be encountered. Client encourages Triad to take any and all measures that in Triad's professional opinion are justified to preserve and protect the health and safety of Triad's personnel and the public, and/or the environment, and Client agrees to compensate Triad for the additional cost of such work. In addition, Client waives any claim against Triad, and agrees to indemnify, defend and hold Triad harmless from any claim or liability for injury or loss arising from Triad's encountering of unanticipated regulated and/or toxic/hazardous materials or such suspected materials. Client further agrees to compensate Triad for any time spent and expenses incurred by Triad in defense of any such claim, with such compensation to be based upon Triad's prevailing fee schedule and expense reimbursement policy. To the extent required by law, Client shall promptly report regulated conditions, including, without limitation, the discovery of releases of regulated and/or toxic/hazardous substances, at the site to the appropriate public authorities in accordance with applicable law.
- 17. HAZARDOUS OR POTENTIALLY HAZARDOUS SAMPLE DISPOSAL:** In the event that samples and/or materials contain or are suspected to contain regulated substances or constituents hazardous or detrimental to health, safety, or the environment as defined by federal, state, or local statutes, regulations, or ordinances, Triad at its sole discretion may, after completion of testing: (1) return such samples and materials to Client, or (2) reach an agreement to have such samples and/or materials properly disposed in accordance with applicable laws. Client agrees to pay all costs associated with the storage, transport, and disposal of hazardous or potentially hazardous samples and/or materials. Client recognizes and agrees that Triad is acting as a bailee and at no time assumes title to said waste.
- 18. CONTAMINATED EQUIPMENT:** All laboratory and field equipment and/or tools contaminated by unanticipated regulated and/or toxic/hazardous materials as a result of performing the Work will be decontaminated at Client's expense. Contaminated consumables will be disposed of and replaced at Client's expense. Equipment and/or

tools which cannot be reasonably decontaminated shall become the property and responsibility of Client. All such equipment and/or tools shall be delivered to Client or disposed of in a manner similar to that indicated for regulated substances or hazardous materials. Client agrees to pay the fair market value of any such equipment and/or tools which cannot reasonably be decontaminated.

19. **SUBSURFACE RISKS:** Whenever engineering or related disciplines are applied to assess subsurface conditions, Client recognizes that special risks occur, and that even a comprehensive sampling and testing program, implemented with the appropriate equipment and experienced personnel under the direction of a trained professional who functions in accordance with a professional standard of care, may fail to detect certain conditions. Therefore, Client assumes the risk that subsurface conditions that Triad properly infers to exist between sampling points may differ significantly from those that actually exist. The passage of time also must be considered, and Client recognizes that, due to natural occurrences or direct or indirect human intervention at the site or distant from it, subsurface conditions may quickly change. Client realizes that nothing can be done to eliminate these risks altogether, but certain techniques can be applied by Triad to help reduce them to that level deemed tolerable by Client. Triad is available to explain these risks and risk reduction methods to Client but, in any event, the scope of services included with this Agreement is that which Client agreed to or selected, in light of his own risk preferences and other considerations.
20. **CERTIFICATION:** Should Triad employ sampling or testing procedures during the course of the work, Client understands that such procedures indicate actual conditions only at the precise locations from which samples or tests were taken, and that Triad will make inferences based on these results to form a professional opinion of conditions in areas beyond those from which samples or tests were taken. Client recognizes that Triad cannot assure the existence of conditions which are inferred to exist from sample or test results. Accordingly, Client agrees that Triad cannot provide any certification of the existence of conditions in locations not directly sampled or tested by Triad.

Unless the Scope of Work specifically provides for certification of the Work beyond those standards set forth in Paragraph 4 of this Agreement, Triad shall not be expected or required to provide any Certification of the Work to Client or third parties. In the event Client anticipates the need for any Certification of the Work by Triad, whether for Client or for third parties, this requirement shall be discussed with Triad's authorized representative prior to execution of this Agreement, and appropriate consideration negotiated.

21. **SITE VISITS:** Where the Work includes monitoring of project site activities by Triad, Client agrees that the Work does not include site visits at a frequency or number beyond those established in the Scope of Work. It is further agreed that Triad will not assume responsibility for the means, methods, techniques, sequences or procedures of project site activities, and it is understood that services provided by Triad will not relieve others of liability for performing the work in accordance with the plans, specifications, and applicable codes and regulations. Triad will alert Client in a timely manner when Triad deems work pertinent to the Scope of Work is not being performed in accordance with the project plans and specifications. Any deviation from the aforementioned shall be defined in the Scope of Work.

In the event the Scope of Work includes site visits by Triad for any purpose, it shall be Client's or Client's designated representative's responsibility to give Triad reasonable notice of the occurrence of any event or procedure requiring Triad's observation or testing. Triad will not be liable for any aspect of an event or procedure for which Triad does not receive 24 hour notice or such notice as may be otherwise agreed.

22. **SUBPOENAS AND OTHER LEGAL NOTICES:** All costs associated with compliance with any subpoena for documents, summons, testimony in a court of law, or for any other purpose relating to work performed by Triad under this Agreement, shall be paid by the Client. Costs include, but are not limited to, hourly personnel charges, travel and accommodations, advice of counsel, and all other reasonable associated costs.
23. **DISPUTES:** If a dispute arises out of the performance of this Agreement (including fees due Triad), the parties agree to exercise good faith efforts to resolve the matter fairly, amicably, and in a timely manner. If the dispute cannot be settled through discussion, each party agrees to endeavor to settle the dispute through mediation. The mediation shall be conducted by a mediator authorized by the state bar association in the jurisdiction where the professional services were performed. The parties agree to resort to arbitration, litigation, or other court proceedings, only in the event that mediation efforts fail to resolve the dispute. Regardless of the outcome of the mediation, the costs associated with the mediation, exclusive of attorney fees, expert fees and other costs not

related to the actual cost of administering the mediation, shall be borne equally by the parties. Notwithstanding any of the dispute resolution provisions stated herein, Triad may proceed with filing and perfecting by litigation, if necessary, any mechanic's liens otherwise assertable under governing law.

24. **TERMINATION OF SERVICES:** Client or Triad may terminate this Agreement for its convenience upon delivery of three days written notice to the other party. In the event Client requests termination of services prior to completion of the Scope of Work, Client agrees to pay all fees incurred through the date services are terminated, plus any necessary shutdown costs. If during the execution of the services, Triad is required to stop operations as a result of changes in the Scope of Work due to requests by the Client or requirements of third parties, Client agrees to pay Triad such additional reasonable charges as may be necessary to compensate Triad for delay, additional expense, or otherwise, including lost profits.
25. **AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY:** Triad and subconsultant (if applicable) shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment qualified individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
26. **MODIFICATION OF CONTRACT:** This Agreement may be modified only in writing, signed by authorized representatives of the Client and Triad.
27. **GOVERNING LAW:** This Agreement shall be governed in all respects by the laws of the State or Commonwealth in which the professional services were performed.