

**Brown's Creek Watershed District  
Board of Managers**

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**In the matter of deposition of fill, damage  
to a stormwater infiltration basin  
at and near 2545 Boutwell Farm Road North,  
Stillwater, Washington County**

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**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
and ORDER**

Property Owner: GreenHalo Builds LLC

Address: 107 Chestnut Street East, Suite 100, Stillwater MN 55042

BCWD Permit No.: 23-03

Permittee: GreenHalo Builds LLC,  
Paul Przybylowski, project manager

***FINDINGS OF FACT***

1. An enforcement hearing on the above-captioned matter was held as part of the regular meeting of the Brown's Creek Watershed District Board of Managers at 6:XX p.m., May 10, 2023, at Family Means, 1875 Northwestern Avenue South, Stillwater, Washington County, Minnesota.
2. BCWD managers Klayton Eckles ... were in attendance. Also attending were BCWD administrator Karen Kill, BCWD engineer Camilla Correll and BCWD inspector Paul Nation, BCWD assistant Cameron Blake and BCWD counsel Michael Welch.
3. Paul Przybylowski, the project manager for GreenHalo Builds, and John Sharkey, chief executive officer for GreenHalo Builds, were notified of the hearing by notice of probable violation, delivered via email sent at 9:47 a.m., May 2, 2023, by BCWD inspector Paul Nation. [ATTENDANCE OF PERMITTEE, PROPERTY OWNERS, REPRESENTATIVES]
4. The matter concerns ineffective erosion and sediment control, and the filling with excavated soil of an established infiltration basin (the Basin) at a single-family home property at 2545 Boutwell Farm Road North in Stillwater (the Property). The Basin was constructed and vegetation established to contribute stormwater-management capacity for the Boutwell Farm project, a 10-home redevelopment project authorized by BCWD under permit 18-04 in 2018. The Basin is protected and ongoing maintenance of its capacity is required under a maintenance declaration recorded as document number 4168013 in the Office of County Recorder, Washington County, Minnesota, on September 11, 2018 (the Declaration). The owner of the Property - Greenhalo Builds - applied for a specific-lot permit from BCWD for excavation and grading to construct the home on the Property on February 9, 2023, but began land-disturbing activities April 5, 2023, prior to satisfying conditions precedent on issuance of the permit. On April 5,

2023, BCWD inspector Paul Nation observed a soil stockpile within the infiltration basin on the Property. After BCWD issued a notice of probable violation on April 13, 2023, and a followup notice on May 2, 2023, GreenHalo representatives submitted revised erosion and sediment control plans necessary to satisfy the outstanding conditions and BCWD Administrator Karen Kill issued permit 23-03 May 3, 2023. The fill within the infiltration area has been removed, but steps necessary to restore the stormwater-management capacity of the basin – which provides stormwater treatment for several properties in the 10-home Boutwell Farms subdivision – have not been initiated.

5. Mr. Nation presented the following at the hearing:
  - a. Engineer’s Report, Permit 18-04 (June 8, 2018).
  - b. Maintenance declaration, Permit 18-04, document number 4168013, (September 11, 2018).
  - c. Photos of completed infiltration basin (August 25, 2020).
  - d. Site inspection photos (April 5, 2023).
  - e. Notice of Probable Violation (April 13, 2023).
  - f. Email correspondence from Paul Przybylowski to Paul Nation (April 26, 2023).
  - g. Site inspection photos (April 28, 2023).
  - h. Updated Notice of Probable Violation (May 2, 2023).
  - i. Permit 23-03 (May 3, 2023).
  - j. Email correspondence from Paul Przybylowski to Paul Nation (May 5, 2023).

These materials, along with the testimony of Mr. Nation and [OTHER] provided during the hearing, constitute the record in this matter.

6. Mr. Nation presented the following summary of the basis for the proposed order:
  - a. The BCWD Board of Managers conditionally approved Permit 18-04 for a 10-lot single-family home development on April 11, 2018, and conditions of the permit, which included recording the Declaration, were satisfied and the BCWD administrator issued the permit on September 28, 2018. The infiltration basin was subsequently constructed in fall 2019 and vegetation was found to have been established August 25, 2020. The basin appears to have functioned as designed since.
  - b. On February 9, 2023, Paul Przybylowski, project manager for GreenHalo Builds, applied for an erosion control permit for the Property. BCWD conditionally approved the permit on February 22, 2023; among the conditions of approval was revision of the proposed erosion and sediment

control plan to ensure that construction-site perimeter silt fence protected the Basin from construction disturbance.

- c. On April 5, 2023, Paul Nation observed during a site inspection that a soil stockpile had been placed within the Basin. Mr. Nation explained that despite the removal of soil from the Basin, fine sediment from the stockpile appears to have clogged soil pores in the Basin, which will prevent vegetation re-growth, reducing the infiltration capacity of the Basin such that it no longer provides infiltration of stormwater at the rate and volume necessary for compliance with BCWD rules and breaching the Declaration. The non-functional infiltration basin will increase the likelihood of overflow from the basin, potentially onto neighboring properties and resulting in increased frequency of stormwater flows to the south central tributary to Brown's Creek and a groundwater-dependent manage 1 wetland along the banks of the tributary.
- d. BCWD issued a notice of probable violation to Mr. Przybylowski and John Sharkey, chief executive officer of GreenHalo Builds, by email on April 13, 2023, notifying them of the filling of the Basin and the actions and timelines required to restore the functionality of the Basin. GreenHalo Builds did not sign the notice or confirm to BCWD that it had been received. However subsequent email, telephone and in-person interactions confirmed Mr. Przybylowski's awareness of the notice.
- e. On April 25, 2023, Mr. Przybylowski indicated that the soil had been removed from the Basin, which was confirmed May 2, 2023, by Mr. Nation. Mr. Nation observed, however, no action had been taken to restore functionality of the Basin.
- f. BCWD issued an updated notice of probable violation to Mr. Przybylowski and Mr. Sharkey by email on May 2, 2023, notifying them that a violation hearing would be conducted May 10, 2023, as part of the regular meeting of the BCWD Board of Managers because the functionality of the Basin had not been restored, nor had plans and specification for restoration of the Basin been provided to BCWD. Mr. Przybylowski confirmed receipt of the NOPV May 2, 2023, via telephone with Mr. Nation.
- g. On May 2, 2023, Mr. Przybylowki provided revised erosion and sediment control plans, addressing the conditions for permit 23-03 issuance. BCWD administrator Karen Kill issued the permit by email May 3, 2023.
- h. While communications regarding submission of plans for restoration of the Basin have continued and grading and other earthwork necessary to restore the Basin took place May 10, 2023, GreenHalo Builds has not submitted an as-built survey, infiltration-testing results or a timeline for seeding the Basin or a plan to manage vegetation until establishment to BCWD for review and approval.

- i. Ms. Kill provided Mr. Przybylowski and Mr. Sharkey with a draft copy of this order via email at 5:35pm on May 8, 2023.
7. At the hearing, Mr. Przybylowski presented ...
8. The BCWD Board of Managers finds the above-stated testimony of Mr. Nation and Ms. Kill, as well as the evidence, facts and statements set forth in the above-cited documents, to be credible and adopts them as its factual findings in this matter.
9. The board of managers finds that the noncompliant conditions on the Property constitute a real and present threat of increased frequency of stormwater runoff to the south central tributary to Brown's Creek and adjacent wetland.

### *CONCLUSIONS OF LAW*

1. BCWD possesses authority under Minnesota Statutes sections 103D.335 and 103D.341 to adopt rules applicable to disturbances of land for wetland protection, to require permits and to issue orders for compliance with those rules and permits, including orders requiring remediation of noncompliant conditions and restoration of property to a compliant condition.
2. BCWD Rule 3.0 – Erosion Control was duly adopted and was in force pursuant to BCWD's statutory authority and applicable provisions of law, and BCWD has a private right of enforcement of the Declaration, duly recorded on the title to Property.
3. Mr. Przybylowski, on behalf of GreenHalo Builds, received due and adequate notice of the May 10, 2023, hearing. The board of managers may hear the evidence of violation and issue a compliance order on the basis of that evidence.
4. Mr. Przybylowski or parties acting at his direction undertook excavation and grading on the Property and filling of an infiltration basin on and extending off of the Property without a duly issued BCWD permit and caused the placement of excavated soils in the infiltration basin in violation of BCWD Rule 3.0 and breaching section 2 and Exhibit B of the Declaration, which require ongoing maintenance of the infiltration capacity of the basin.
5. While GreenHalo Builds has removed excavated soils from the basin, the infiltration capacity of the basin has not been restored and details for restoration have not been finalized as necessary to document restoration of the Basin to design capacity and compliance with the Declaration.

### *ORDER*

Accordingly, the Brown's Creek Watershed District Board of Managers hereby ORDERS GreenHalo Builds to:

1. Provide a plan to establish and maintain vegetation within the Basin for review and approval by BCWD by **May 17, 2023**.
2. Provide monthly updates to BCWD on the status of Basin vegetation, beginning **June 1, 2023**.
3. Submit to BCWD necessary documentation of completion of the necessary grading and earthwork by close of business **June 7, 2023**, including double-ring infiltrometer results (to document capacity) and an as-built grading survey.
4. Advise BCWD of successful reestablishment of vegetation in the Basin by [DATE] for confirmation by inspection by BCWD.
5. Replenish the BCWD fee deposit for permit 23-03 to [AMOUNT] by May 24, 2023.

This order may be enforced in district court through criminal misdemeanor prosecution, civil injunction or other appropriate order pursuant to Minnesota Statutes sections 103D.545 and 103D.551.

Date: May 11, 2023

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 Klayton Eckles, President  
 BCWD Board of Managers

**Delivered via:**

- Email** (email: \_\_\_\_\_) **Date:** \_\_\_\_\_
- IN PERSON** **Date:** \_\_\_\_\_
- OTHER** (specify: \_\_\_\_\_) **Date:** \_\_\_\_\_

**ISSUED TO/RECEIVED BY:**

\_\_\_\_\_ Date: \_\_\_\_\_  
 Name/Title (Print)

\_\_\_\_\_  
 Title/Organization (Print)

\_\_\_\_\_  
 Address & Telephone

\_\_\_\_\_  
 Signature

*Your signature here indicates only that you received this order.*