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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: (304) 926-0495  
Fax: (304) 926-0463

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

**CONSENT ORDER  
ISSUED UNDER THE  
WATER POLLUTION CONTROL ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Solutia, Inc  
Michael L. House  
575 Maryville Center Drive  
St. Louis, MO 63141

DATE: February 10, 2015

ORDER NO.: 8198

AND/OR

Putnam County Development Authority  
Andrew Dunlap, Executive Director  
PO Box 167  
Scott Depot, WV 25560

**INTRODUCTION**

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Solutia, Inc. and/or Putnam County Development Authority.

**FINDINGS OF FACT**

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

1. Solutia, Inc. and/or Putnam County Development Authority are conducting land disturbance activity located near Winfield, Putnam County, West Virginia. Solutia, Inc. was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106230, on October 10, 2012. Putnam County Development Authority was added as co-permittee for the WV/NPDES permit on May 23, 2014.
2. On April 14, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the

Promoting a healthy environment.

following sections of the terms and conditions of the aforementioned WV/NPDES permit were observed and documented:

- a. Section C.1.a-The Permittee failed to comply with all conditions of the permit. Specifically, the Permittee exceeded disturbance limits of 7.25 acres at any one time. The Permittee had disturbed approximately twelve (12) acres, which is greater than its acreage allowance under phasing requirements.
- b. Section D.1-The Permittee failed to operate and maintain all erosion control devices. Specifically, there were sediment deposits in sediment traps two (2) and three (3), and the silt fence had deposits above 50% and needed repairs.
- c. Section G.4.e.2.A.i-The Permittee failed to temporarily seed and mulch all areas where construction activities had ceased for more than seven (7) days.
- d. Section G.4.e.2.A.ii.a-The Permittee failed to install a sediment trap which provides a storage volume equal to 3,600 cubic feet per acre of drainage. Specifically, sediment trap one (1) had been removed and sediment traps two (2) and three (3) did not have the storage capacity for the approximately twelve (12) acres of disturbance.
- e. Section G.4.e.2.A.ii.d-The Permittee failed to stabilize diversions prior to becoming functional. Specifically, the diversion leading to sediment trap three (3) was not stabilized.
- f. Section G.4.e.2.A.ii.c-The Permittee failed to protect the inlet for a sediment trapping structure against erosion. Specifically, the inlet from an unstabilized diversion leading to sediment trap three (3) was not protected from erosion.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. I14-40-270-MBC through I14-40-275-MBC were issued to Solutia, Inc.

3. On May 22, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of the aforementioned WV/NPDES permit was observed and documented:
  - a. Section C.1.a-The Permittee failed to comply with all conditions of the permit. Specifically, the Permittee exceeded disturbance limits of 7.25 acres at any one time. The Permittee had disturbed approximately twelve (12) acres, which is greater than its acreage allowance under phasing requirements.

As a result of the aforementioned violation, NOV No. I14-40-001-EJP was issued to Solutia, Inc.

4. On July 23, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Solutia, Inc. and Putnam County Development Authority's WV/NPDES permit were observed and documented:
  - a. Section C.1.a-The Permittee failed to comply with all conditions of the permit. Specifically, the Permittee exceeded disturbance limits of 7.25 acres at any one time. The Permittee had disturbed approximately twelve (12) acres, which is greater than its acreage allowance under phasing requirements.

- b. Section D.1-The Permittee failed to operate and maintain all erosion control devices. Specifically, the stone at the entrance was filled with sediments, and the silt fence had not been maintained.
- c. Section G.4.e.2.A.i-The Permittee failed to temporary seed and mulch all areas where construction activities had ceased for more than seven (7) days. Specifically, the slope above the current borrow area had not been adequately seeded and mulched.
- d. Section G.4.e.2.A.ii-The Permittee failed to provide structural practices to divert flow around exposed soils, storm flows or otherwise limit runoff from exposed areas and eliminate sediment-laden runoff from the site. Specifically, there were improperly shaped diversions with improperly sized stone.
- e. Section G.4.e.2.A.i.c-The Permittee failed to immediately reseed and mulch all areas where the the seed had failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within thirty (30) days after seeding and mulching. Specifically, the initial borrow area had not been adequately reseeded and mulched.
- f. Section G.4.e.2.D.i-The Permittee failed to inspect and clean all adjacent public and private roads of debris originating from the construction site.

As a result of the aforementioned violations, NOV Nos. I14-40-094-GSR through I14-40-099-GSR were issued to Solutia, Inc. and/or Putnam County Development Authority.

5. On December 18, 2014, WVDEP personnel and representatives of Solutia, Inc. and/or Putnam County Development Authority met to discuss the terms and conditions of this Order.

### **ORDER FOR COMPLIANCE**

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Solutia, Inc. and/or Putnam County Development Authority shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within twenty (20) days of the effective date of this Order, Solutia, Inc. and/or Putnam County Development Authority shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Solutia, Inc. and/or Putnam County Development Authority will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0115924, Registration No. WVR106230, and Order No. 8198. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
SW Regional Environmental Enforcement Office  
PO Box 662  
Teays, WV 25569**

A copy of this plan shall be submitted to:

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

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of Solutia, Inc. and/or Putnam County Development Authority's permit violations, Solutia, Inc. and/or Putnam County Development Authority shall be assessed a civil administrative penalty of twenty-six thousand one hundred thirty dollars (\$26,130) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

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

### **OTHER PROVISIONS**

1. Solutia, Inc. and/or Putnam County Development Authority hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Solutia, Inc. and/or Putnam County Development Authority agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Solutia, Inc. and/or Putnam County Development Authority does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Solutia, Inc. and/or Putnam County Development Authority other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Solutia, Inc. and/or Putnam County Development Authority shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Solutia, Inc. and/or Putnam County Development Authority becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Solutia, Inc. and/or Putnam County Development Authority shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Solutia, Inc. and/or Putnam County Development Authority intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Solutia, Inc. and/or Putnam County Development Authority (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Solutia, Inc. and/or Putnam County Development Authority of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Solutia, Inc. and/or Putnam County Development Authority to additional penalties and injunctive relief in accordance with the applicable law.

5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Solutia, Inc. and/or Putnam County Development Authority, its successors and assigns.
7. This Order shall terminate upon Solutia, Inc. and/or Putnam County Development Authority's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

*Michael L. House*

Michael L. House  
Solutia, Inc

*2/23/15*  
Date

AND/OR

Andrew Dunlap, Executive Director  
Putnam County Development Authority

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Scott G. Mandirola, Director  
Division of Water and Waste Management

\_\_\_\_\_  
Date

*revised March 2013*

**RECEIVED**

**FEB 24 2015**

**ENVIRONMENTAL  
ENFORCEMENT**

Putnam County Development Authority Soil Borrow Site Photo Attachment



(July 23, 2014) Stone entry at site full of sediments



(July 23, 2014) Exit from the site

Putnam County Development Authority Soil Borrow Site Photo Attachment



(July 23, 2014) Sediments tracked to public roadway



(August 14, 2014) Sediments tracked from the site to public roadway

Putnam County Development Authority Soil Borrow Site Photo Attachment



(July 23, 2014) Interior of sediment trap 2



(July 23, 2014) Diversion entry to sediment trap 2



(July 23, 2014) Additional entry to sediment trap 2

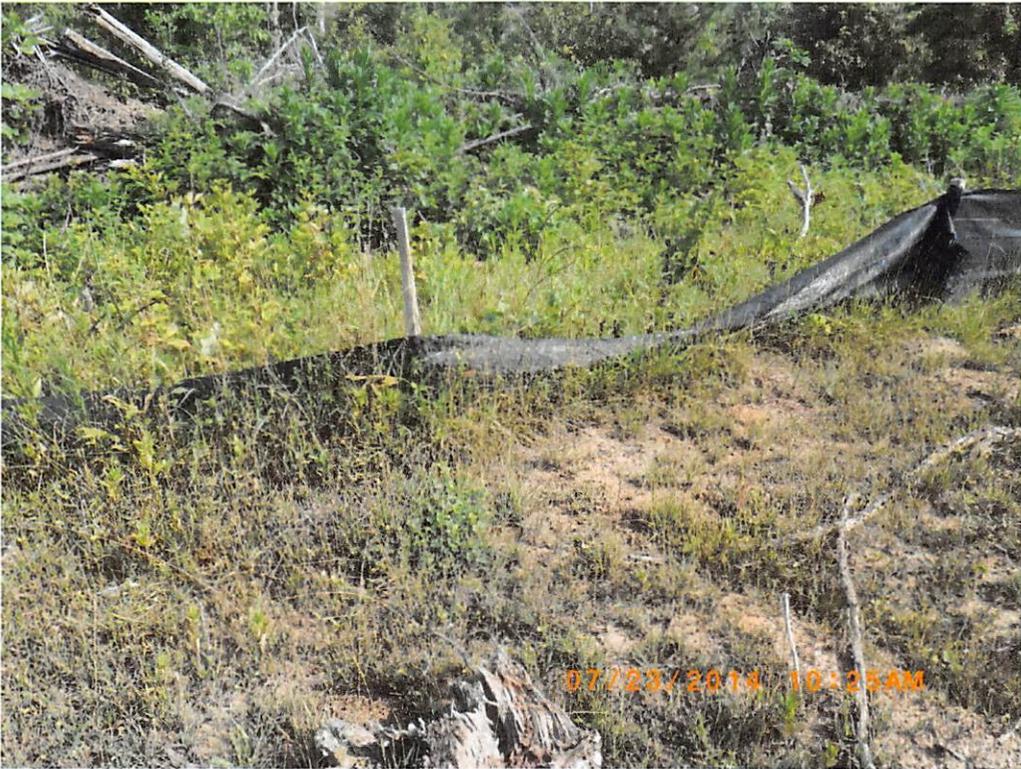


(July 23, 2014) Diversion leading to sediment trap 2

Putnam County Development Authority Soil Borrow Site Photo Attachment



(July 23, 2014) Erosion rills leading to diversion at initial borrow area



(July 23, 2014) Silt fence in disrepair

Putnam County Development Authority Soil Borrow Site Photo Attachment



(July 23, 2014) Erosion rills leading to beginning of diversion at initial borrow area



(July 23, 2014) Area at top of initial borrow area

Putnam County Development Authority Soil Borrow Site Photo Attachment



(July 23, 2014) Erosion rills leading to diversion at sediment trap 2



(July 23, 2014) Diversion leading to sediment trap 3

Putnam County Development Authority Soil Borrow Site Photo Attachment



(July 23, 2014) Diversion entry area and side wall of sediment trap 3



(July 23, 2014) View across sediment trap 3

Putnam County Development Authority Soil Borrow Site Photo Attachment



(July 23, 2014) Slope above current borrow area not stabilized



(July 23, 2014) Interior of sediment trap 1

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Solutia, Inc./Putnam County Development Authority Receiving Stream: \_\_\_\_\_

Treatment System Design Maximum Flow: \_\_\_\_\_ MGD

Treatment System Actual Average Flow: \_\_\_\_\_ MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#												
			2a	2b	2c	2d	2e	2f	3a	4a	4b	4c	4d	4e	4f
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1	1
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1	1
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1	1
d)	Length of Time	1 to 3	1	1	1	1	1	1	2	3	2	2	1	1	1
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1	1
<b>Average Potential for Harm Factor</b>			1	1	1	1	1	1	1.2	1.4	1.2	1.2	1	1	1
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>													
	Degree of Non-Compliance	1 to 3	3	2	2	3	1	1	3	3	2	2	2	2	3

**Potential for Harm Factors:**

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

**Examples/Guidance:**

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly, >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.



		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
2a	Minor	Major	\$2,000	1	\$2,000
2b	Minor	Moderate	\$1,500	1	\$1,500
2c	Minor	Moderate	\$1,500	1	\$1,500
2d	Minor	Major	\$2,000	1	\$2,000
2e	Minor	Minor	\$1,000	1	\$1,000
2f	Minor	Minor	\$1,000	1	\$1,000
3a	Moderate	Major	\$4,200	1	\$4,200
4a	Moderate	Major	\$4,400	1	\$4,400
4b	Moderate	Moderate	\$3,200	1	\$3,200
4c	Moderate	Moderate	\$3,200	1	\$3,200
4d	Minor	Moderate	\$1,500	1	\$1,500
4e	Minor	Moderate	\$1,500	1	\$1,500
4f	Minor	Major	\$2,000	1	\$2,000
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
<b>Total Base Penalty</b>					<b>\$29,000</b>

## Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

### Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

**Size of Violator: 0 - 50% decrease**

**NOTE:** This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

**Additional Other factors to be determined for increases or decreases on a case-by-case basis.**

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

## Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$2,900
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$2,900)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,900)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>(\$2,870)</b>
<b>Penalty =</b>			<b>\$26,130</b>

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b>	