



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
Fax: (304) 926-0488

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

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

TO: Buckeye Community Twenty Eight, LP
Steven J. Boone
3021 E Dublin-Granville Rd.
Columbus, OH 43231

DATE: February 18, 2015

ORDER NO.: 8224

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 Buckeye Community Twenty Eight, LP (hereinafter "Buckeye Twenty-Eight").

FINDINGS OF FACT

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

1. Buckeye Twenty-Eight operates a sewer treatment facility located near Bloomingrose, Boone County, West Virginia. Buckeye Twenty-Eight was issued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550486, on February 21, 2011
2. On September 19, 2013, Order No. 7914 was issued to Buckeye Twenty-Eight due to violations of Section B.2, Monitoring and Reporting, of its WV/NPDES permit.
3. On May 21, 2014, Order No. 8006 was issued to Buckeye Twenty-Eight due to violations of Section B, Monitoring and Reporting, of its WV/NPDES permit.
4. On October 9, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility in response to a citizen complaint.

During the inspection, violations of the following sections of the terms and conditions of Buckeye Twenty-Eight's WV/NPDES permit were observed and documented:

- a. Section C.2- Buckeye Twenty-Eight failed to report a bypass of the treatment unit resulting in a spill to the facility parking lot.
- b. Section F.1- Buckeye Twenty-Eight failed to properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of the permit. Specifically, the lift pumps in the plant headworks had not been properly operated and maintained.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W14-03-266-BMW and W14-03-267-BMW were issued to Buckeye Twenty-Eight.

5. On December 18, 2014, WVDEP personnel conducted a review of facility records from the time period of First Quarter 2012 through Third Quarter 2014. During this review, the following violations of the terms and conditions of Buckeye Twenty-Eight's WV/NPDES permit were observed:

- a. Section A – Thirty-six (36) exceedances of Buckeye Twenty-Eight's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-seven (7)
 - ii. Moderate violations-sixteen (16)
 - iii. Major violations-thirteen (13)

As a result of the aforementioned violations, NOV Nos. W14-03-168-BMW, W14-03-199-BMW, W14-03-237-BMW, and W14-03-272-BMW were issued to Buckeye Twenty-Eight during previous records reviews.

6. On February 2, 2015, WVDEP personnel approved Buckeye Twenty-Eight's proposed plan of corrective action, which outlined action items and completion dates for how and when Buckeye Twenty Eight will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The approved plan of corrective action has become part of this Order, and failure to adhere to the approved plan is a violation of this Order.
7. On February 10, 2015, WVDEP personnel and representatives of Buckeye Twenty-Eight met to discuss the terms and conditions of this Order.
8. On February 13, 2015, WVDEP personnel conducted a review of facility records from the time period of First Quarter 2012 through Fourth Quarter 2014. During this review, the following violations of the terms and conditions of Buckeye Twenty-Eight's WV/NPDES permit were observed:
 - a. Section A – Forty (40) exceedances of Buckeye Twenty-Eight's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-ten (10)

- ii. Moderate violations-seventeen (17)
- iii. Major violations-thirteen (13)

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. Buckeye Twenty-Eight shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Because of Buckeye Twenty-Eight's permit violations, Buckeye Twenty-Eight shall be assessed a civil administrative penalty of eighteen thousand five hundred ten dollars (\$18,510) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

Payment 1 in the amount of \$3,085 due on or before April 1, 2015.
Payment 2 in the amount of \$3,085 due on or before May 1, 2015.
Payment 3 in the amount of \$3,085 due on or before June 1, 2015.
Payment 4 in the amount of \$3,085 due on or before July 1, 2015.
Payment 5 in the amount of \$3,085 due on or before August 1, 2015.
Payment 6 in the amount of \$3,085 due on or before September 1, 2015.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

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

OTHER PROVISIONS

1. Buckeye Twenty-Eight 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, Buckeye Twenty-Eight 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, Buckeye Twenty-Eight 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 Buckeye Twenty-Eight 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, Buckeye Twenty-Eight 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 Buckeye Twenty-Eight becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Buckeye Twenty-Eight 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 Buckeye Twenty-Eight 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 Buckeye Twenty-Eight (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 Buckeye Twenty-Eight 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 Buckeye Twenty-Eight 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 Buckeye Twenty-Eight, its successors and assigns.

7. This Order shall terminate upon Buckeye Twenty-Eight's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Steven J. Boone
Buckeye Community Twenty Eight, LP

3/02/15

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

RECEIVED

MAR 03 2015

ENVIRONMENTAL
ENFORCEMENT

Table One: Buckeye Twenty-Eight DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - First Quarter 2012 through Fourth Quarter 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
2Q12	BOD	mg/L	5	46	820%	-	-	X
2Q12	TSS	mg/L	30	96	220%	-	X	-
2Q12	Fecal Coliform Bacteria	col/100ml	200	3400	1600%	-	-	X
2Q12	Ammonia Total Nitrogen	mg/L	3	18.7	523%	-	-	X
3Q12	BOD	mg/L	5	5.8	16%	X	-	-
4Q12	BOD	mg/L	10	28	180%	-	X	-
4Q12	TSS	mg/L	30	74	147%	-	X	-
4Q12	Ammonia Total Nitrogen	mg/L	6	13.1	118%	-	X	-
1Q13	BOD	mg/L	10	93	830%	-	-	X
1Q13	TSS	mg/L	30	50	67%	-	X	-
1Q13	Fecal Coliform Bacteria	col/100ml	200	9300	4550%	-	-	X
1Q13	Ammonia Total Nitrogen	mg/L	6	25	317%	-	-	X
2Q13	Fecal Coliform Bacteria	col/100ml	200	567	184%	-	X	-
3Q13	Fecal Coliform Bacteria	col/100ml	200	9200	4500%	-	-	X
4Q13	BOD	mg/L	10	27.5	175%	-	X	-
1Q14	BOD	mg/L	10	15	50%	-	X	-
1Q14	Fecal Coliform Bacteria	col/100ml	200	6200	3000%	-	-	X
2Q14	BOD	mg/L	5	25	400%	-	-	X
3Q14	BOD	mg/L	5	10	100%	-	X	-
3Q14	TSS	mg/L	30	48	60%	-	X	-
3Q14	Fecal Coliform Bacteria	col/100ml	200	240	20%	X	-	-
4Q14	BOD	mg/L	10	16.5	65%	-	X	-
4Q14	TSS	mg/L	30	41	37%	X	-	-

Outlet 001 DMR Exceedances - MAX. DAILY - First Quarter 2012 through Fourth Quarter 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
2Q12	BOD	mg/L	10	46	360%	-	X	-
2Q12	TSS	mg/L	60	96	60%	X	-	-
2Q12	Fecal Coliform Bacteria	col/100ml	400	3400	750%	-	-	X
2Q12	Ammonia Total Nitrogen	mg/L	6	18.7	212%	-	X	-
4Q12	BOD	mg/L	20	28	40%	X	-	-
4Q12	TSS	mg/L	30	74	147%	-	X	-
4Q12	Ammonia Total Nitrogen	mg/L	12	13.1	9%	X	-	-
1Q13	BOD	mg/L	20	93	365%	-	X	-
1Q13	Fecal Coliform Bacteria	col/100ml	400	9300	2225%	-	-	X
2Q13	Fecal Coliform Bacteria	col/100ml	400	567	42%	X	-	-
3Q13	Fecal Coliform Bacteria	col/100ml	400	9200	2200%	-	-	X
4Q13	BOD	mg/L	20	33	65%	X	-	-
4Q13	Fecal Coliform Bacteria	col/100ml	400	2200	450%	-	X	-
1Q14	Fecal Coliform Bacteria	mg/L	400	6200	1450%	-	-	X
2Q14	BOD	mg/L	10	43	330%	-	X	-
4Q14	BOD	mg/L	20	33	65%	X	-	-
4Q14	TSS	mg/L	60	82	37%	X	-	-

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		10	17	13



10/9/14 – Lift station and plant headworks bypassing



10/9/14 – Lift station overflowing

Photo Attachment



10/9/14 – Wastewater escaping the plant headworks



10/9/14 – Outlet 001 with no discharge due to the bypass at the plant headworks

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Buckeye Twenty-Eight **Receiving Stream:** _____

Treatment System Design Maximum Flow: 0.003 **MGD**

Treatment System Actual Average Flow: 0.0028 **MGD** (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#														
			4a	4b	5ai	5aii	5aiii										
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1										
b)	Toxicity of Pollutant	0 to 3	0	1	1	1	1										
c)	Sensitivity of the Environment	0 to 3	0	1	1	1	1										
d)	Length of Time	1 to 3	1	1	1	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	0	1	1	1	1										
Average Potential for Harm Factor			0.4	1	1	1	1	No									
2)	Extent of Deviation Factor	Factor Range															
	Degree of Non-Compliance	1 to 3	3	3	1	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.

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		\$4,620
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)		50	(\$23,100)
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	(\$4,620)
6.2.b.3 - Cooperation with the Secretary		10	(\$4,620)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$27,690)
Penalty =			\$18,510

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	
Estimated Economic Benefit	\$0
Comments: No economic benefit warranted.	