west virginia department of environmental protection

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

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

January 3, 2012

Mr. Chris Phipps, Owner
C&J Gasfield Services
PO Box 638, Brush Creek Rd.
Clintwood, VA 24228

CERTIFIED RETURN RECEIPT REQUESTED
91 7199 9991 7030 8755 8883

RE: Violation of Chapter 22, Article 11 of the WV State Code

Dear Mr. Phipps:

Enclosed is revised CONSENT ORDER NUMBER 7416 dated January 3, 2012. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to C&J Gasfield Services violating Chapter 22, Article 11 of the WV State Code at its facility located at Kessling Mill Road, Upshur County, West Virginia. This revision is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,

Michael A. Zeto
Chief Inspector

Enclosure

cc: Scott G. Mandirola, Director, DWWM (via e-mail)
Yogesh Patel, Asst. Director, DWWM/Permits
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
Laura McGee, Environmental Resources Specialist, EE (via e-mail)
Brad Swiger, Environmental Inspector Supervisor, EE/WW (via e-mail)
Stan Wolfe, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)

revised September 2011

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11

TO: Mr. Chris Phipps, Owner
C&J Gasfield Services
PO Box 638, Brush Creek Rd.
Clintwood, VA 24228

DATE: January 3, 2012

ORDER NO.: 7416

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 C&J Gasfield Services (hereinafter "C&J").

FINDINGS OF FACT

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

1. C&J operates an oil and gas field service company located on Kessling Mill Road, Upshur County, West Virginia.

2. On November 18, 2009, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection at C&J and documented several deficiencies:

    a. Construction activity to prepare the site had been performed over the previous two years without securing a WV/NPDES General Water Pollution Control Permit for Stormwater Associated with Construction Activities (Construction Stormwater Permit). The original construction activity for site development was not stabilized to prevent erosion and sedimentation and a large area of bare mineral soil was observed, a violation of WV Code, Chapter 22, Article 11, Section 1 et seq. Notice of Violation (NOV) No. NW-SW-I-111809-01 was issued.

b. Petroleum products had spilled onto the ground in such a manner that could impact groundwater quality, a violation of WV Legislative Rule 47-58-7.1. NOV No. NW-SW-I-111809-02 was issued.
c. A Multi-Sector General WV/NPDES Water Pollution Control Permit for Stormwater Associated with Industrial Activity (Industrial Stormwater Permit) had not been secured for the site. A warning was issued with instruction to apply for an Industrial Stormwater Permit by December 12, 2009.
d. Waste soaps utilized for drilling activity had been returned to C&J and 56 drums of waste soap remained on site without secondary containment.

3. On January 25, 2010, WVDEP personnel conducted an inspection at C&J and determined that C&J had not applied for coverage under the Construction Stormwater Permit. NOV No. NW-SW-I-012510-01 was issued.

4. On February 18, 2010, WVDEP personnel met with C&J in a pre-enforcement meeting to discuss the subject of non-compliance at its Kessling Mill Road facility. The following issues were discussed:

a. The Application for a WV/NPDES Construction Stormwater Permit was ready for submittal.
b. The Application for a WV Industrial Stormwater Permit was proceeding and samples had been collected.
c. A concrete secondary containment system for drum storage was scheduled for construction upon cooperation with the weather.
d. The driveway to the site had been graveled with drainage ditches installed.
e. Most of the area utilized for site activities had been covered with gravel.
f. Slopes were to be seeded and mulched in cooperation with the weather.
g. A third sediment control pond was constructed which included a boom for additional control.
h. Oil contaminated soils had been removed, placed on a barrier, and covered while waiting for disposal at a permitted landfill.
i. The expected date of completion of all corrective actions was April 30, 2010.

5. By correspondence dated March 15, 2010, WVDEP advised C&J that the Application for a Construction Stormwater Permit was missing the required pollution prevention plan.

6. On March 15, 2010, WVDEP received C&J's Permit Application for an Industrial Stormwater Permit, Registration No. WVG611454.

7. By correspondence dated June 1, 2010, WVDEP notified C&J that the Application for an Industrial Stormwater Permit was missing the required stormwater pollution prevention plan, the groundwater protection plan and the $700 application fee. WVDEP further advised C&J that the permit application would be voided on November 8, 2010.

8. By e-mail correspondence dated August 6, 2010, WVDEP issued a final reminder to C&J that the required pollution prevention plan for the Construction Stormwater Permit was to be submitted by August 12, 2010.

9. On August 13, 2010, WVDEP voided C&J's Application for a Construction Stormwater Permit.

10. By correspondence dated September 1, 2010, WVDEP reminded C&J that the required information for the Industrial Stormwater Permit Application requested by letter dated June 1, 2010 had not been received. C&J was further advised that failure to submit the information was sufficient cause for Permit denial.

11. On November 8, 2010, WVDEP voided C&J's Application for an Industrial Stormwater Permit for failure to submit the requested information as notified on June 1, 2010 and September 1, 2010.

12. On March 8, 2011, WVDEP personnel conducted an inspection at C&J and documented several deficiencies:

    a. C&J had not obtained an Industrial Stormwater permit, a violation of WV Code, Chapter 22, Article 11, Section 1 et seq. NOV No. NW-SW-I-0330811-02 was issued.
    b. A large volume of petroleum product was spilled onto the ground in such a manner that could impact groundwater quality, a violation of WV Legislative Rule 47-58-7.1. NOV No. NW-SW-I-030811-01 was issued.
    c. The access road was rutted and mud was tracked onto the public highway.
    d. The sediment pond discharge channel was eroded. A Warning was issued.
    e. A large number of drums storing waste material were stored outside of secondary containment. A Warning was issued.

13. On April 7, 2011, WVDEP investigated a complaint about a spill at C&J. Upon arrival, WVDEP personnel observed vacuum trucks collecting brine water that had spilled at the site. Specifically, a plastic storage container stored at C&J was breached by a piece of equipment and released approximately one thousand five hundred fifty (1550) gallons of brine water onto the ground. The brine water flowed through the facility, onto the county road ditch, and into an unnamed tributary of Childer's Run. It was also noted that C&J failed to immediately notify the emergency spill hotline, a violation of the Legislative Rule 47-11-2.2.a. NOV No. NW-SW-I-040711-01 was issued.

14. On December 8, 2011, WVDEP personnel and representatives of C&J 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. C&J shall immediately take all measures to comply with all pertinent laws and/or rules.

2. Within thirty (30) days of entry of this Order, C&J shall provide written notification to WVDEP of all sites under the control, ownership, partnership or guidance of C&J in West Virginia.

3. Within thirty (30) days of entry of this Order, C&J shall develop and implement a training program for all employees for spill identification, reporting and response.

4. Within ninety (90) days of entry of this Order, C&J shall provide proof of development and implementation of the spill identification, reporting and response training, including names of all employees of C&J and dates of training.

5. Within thirty (30) days of entry of this Order, C&J shall install, repair, or rehabilitate secondary spill control structures and document a system management necessary to store all liquids on-site.

6. Within thirty (30) days of entry of this Order, C&J shall provide written protocol, procedures and/or practices explaining how brine, stormwater and other removed waste is removed, handled and properly disposed.

7. Within thirty (30) days of entry of this Order, C&J shall provide to WVDEP, a detailed accounting of all disposal activities for brine and other removed wastes. The information shall reflect dates, volumes and destinations of all removed wastes, including brine from January 1, 2010 to the date of entry of this Order.

8. Within thirty (30) days of entry of this Order, C&J shall submit an administratively complete application to obtain an Industrial Stormwater Permit for its facility.

9. Within thirty (30) days of entry of this Order, C&J shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when C&J will achieve compliance. The plan of corrective action shall be submitted to:

WVDEP Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road, Suite #1
Fairmont, WV 26554

A copy of this plan shall be submitted to:

Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th 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.

10. Because of C&J's West Virginia Code and Legislative Rule violations, C&J shall be assessed a civil administrative penalty of nineteen thousand six hundred ten dollars ($19,610) 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 $1,634.16 due on or before March 1, 2012.
    Payment 2 in the amount of $1,634.16 due on or before April 1, 2012.
    Payment 3 in the amount of $1,634.16 due on or before May 1, 2012.
    Payment 4 in the amount of $1,634.16 due on or before June 1, 2012.
    Payment 5 in the amount of $1,634.16 due on or before July 1, 2012.
    Payment 6 in the amount of $1,634.16 due on or before August 1, 2012.
    Payment 7 in the amount of $1,634.16 due on or before September 1, 2012.
    Payment 8 in the amount of $1,634.16 due on or before October 1, 2012.
    Payment 9 in the amount of $1,634.16 due on or before November 1, 2012.
    Payment 10 in the amount of $1,634.16 due on or before December 1, 2012.
    Payment 11 in the amount of $1,634.16 due on or before January 1, 2013.
    Payment 12 in the amount of $1,634.24 due on or before February 1, 2013.

    Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

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

OTHER PROVISIONS

1. C&J 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, C&J 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, C&J 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 C&J 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, C&J 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 C&J becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and 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 C&J 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 C&J (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 C&J 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 C&J 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 C&J, its successors and assigns.

7. This Order shall terminate upon C&J's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

_____ _____

C&J Gasfield Services Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

_____ _____

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

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: C&J Gas Field Services **Receiving Stream:**

Treatment System Design Maximum Flow: N/A **MGD**

Treatment System Actual Average Flow: N/A **MGD** (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF# 12a	13											
a)	Amount of Pollutant Released	1 to 3	1	1											
b)	Toxicity of Pollutant	0 to 3	1	1											
c)	Sensitivity of the Environment	0 to 3	1	1											
d)	Length of Time	1 to 3	3	1											
e)	Actual Exposure and Effects thereon	0 to 3	1	1											
	Average Potential for Harm Factor		1.4	1	No	No	No	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3	3	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.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

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

		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
12a	Moderate	Major	$4,400	1	$4,400
13	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
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
Total Base Penalty					$6,400

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 -	30		$1,920
6.2.b.4 - Compliance/noncompliance history			$0
6.2.b.6 - Economic benefits - (flat monetary increase)	$11,900		$11,900
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			$0
6.2.b.3 - Cooperation with the Secretary		10	($640)
6.2.b.5 - Ability to Pay			$0
Penalty Adjustments			**$13,210**
Penalty =			**$19,610**

Estimated Economic Benefit Item	Estimated Benefit ($)
Monitoring & Reporting	$300
Installation & Maintenance of Pollution Control Equipment	$5,000
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	$1,600
Competitive Advantage	$5,000
Estimated Economic Benefit	**$11,900**
Comments:	Monitoring 2/yr at $150 year, Permit app for Construction and Industrial permits: Ind-$700 initial +$300 annual/2years, NOI until site stabilized $150/2years, $5000 SWPPP development cost, $5000 pollution control equipment.