



west virginia department of environmental protection

Division of Water and Waste Management
601 57th 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

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

TO: Crossroads Land Development Co.
Attn: James Buckland
PO Box 1682
Beaver, WV 25813

DATE: August 1, 2011

ORDER NO.: 6952

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 Crossroads Land Development Co. (hereinafter "Crossroads").

FINDINGS OF FACT

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

1. Crossroads operates a construction project with land disturbance located near Bradley, Raleigh County, West Virginia. Crossroads was issued WV/NPDES General Water Pollution Control Permit for Storm Water Associated with Construction Activities (WV0115924), General Permit Registration No. WVG071843 on November 23, 1999 with an expiration date of December 1, 2008. This permit was for 17.2 acres of disturbance.
2. On May 7, 2007, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the construction operation. During the inspection, the following violation of Crossroads' WV/NPDES permit were observed and documented in that Crossroads had failed to:
 - a. Properly maintain all sections of silt fencing throughout the site (Section D.1.)
 - b. Properly maintain all sediment ponds and sumps (Section D.1.)

Promoting a healthy environment.

- c. Stabilize all areas of disturbance within 7 days of reaching final grade or where construction activities have temporarily ceased, and reseed all areas where seed has failed to germinate adequately (G.4.e.2.A.i.).

Notice of Violation (NOV) No. 070507-1 was issued to Crossroads.

3. On August 18, 2008, WVDEP personnel conducted an inspection of the construction operation. During the inspection, the following violation of Crossroads' WV/NPDES permit were observed and documented in that Crossroads had failed to:
 - a. Display the required public notice sign at the entrance to the project (G.4.b.5.).
 - b. Stabilize all diversions immediately, and prior to, becoming functional (G.4.e.2.A.i.d.).
 - c. Implement appropriate Best Management Practices (BMPs) in that fill slopes are rilled and gullied, haulroads are rutted and without water bars, and a soil stockpile is without temporary sediment controls (G.4.e.2.A.ii.).
 - d. Properly maintain all sections of silt fencing throughout the site (Section D.1.)
 - e. Stabilize all areas of disturbance within 7 days of reaching final grade or where construction activities have temporarily ceased, and reseed all areas where seed has failed to germinate adequately (G.4.e.2.A.i.).

NOV No. 080818-1 was issued to Crossroads.

4. On September 4, 2008, WVDEP issued Order No. 6551 to Crossroads. The Director ORDERED Crossroads to:
 - a. Cease and Desist land development until violations have been abated and contact WVDEP Environmental Enforcement to arrange an inspection prior to restarting any development activities.
 - b. Within 20 days of the effective date of the order, submit a proposed corrective action plan and schedule which addresses, at a minimum, taking interim measures to stabilize the site, properly maintain temporary sediment controls to assure all waters leaving the site pass through sediment controls and installing the required public notice sign.
5. On May 8, 2009, WVDEP personnel conducted an inspection of the construction operation. During the inspection, the following violation of Order No. 6551 and/or Chapter 22, Article 11, Section 1 et seq. (§22-11-1 et seq.) were observed and documented in that Crossroads had failed to:
 - a. Obtain a valid permit since the previous permit had expired (§22-11-1 et seq.).
 - b. Submit a "Plan of Action" as required by Order No. 6551 (§22-11-1 et seq.).

A warning was issued to Crossroads to comply with Order No. 6551.

6. On July 30, 2009, Crossroads was issued WV/NPDES General Water Pollution Control Permit No. WV0115924, General Permit Registration No. WVR104372 with an expiration date of December 4, 2012. This permit was for 9.3 acres of disturbance.

7. On September 16, 2009, WVDEP personnel conducted an inspection of the construction operation. During the inspection, the following violation of Crossroads' WV/NPDES permit, Order No. 6551 and/or §22-11-1 et seq. were observed and documented in that Crossroads had failed to:
- a. Submit a "Plan of Action" as required by Order No. 6551 (§22-11-1 et seq.).
 - b. Properly maintain all sections of silt fencing throughout the site (Section D.1.).
 - c. Stabilize all areas of disturbance within 7 days of reaching final grade or where construction activities have temporarily ceased, and reseed all areas where seed has failed to germinate adequately (Section G.4.e.2.A.i.).
 - d. Implement appropriate BMPs in that fill slopes are rilled and gullied, and haulroads are rutted and without water bars (Section G.4.e.2.A.ii.).
 - e. Stabilize all diversions immediately, and prior to, becoming functional (Section G.4.e.2.A.i.d.).
 - f. Comply with its Storm Water Pollution Prevention Plan (SWPPP) (Section B).
 - g. Install the required public notice sign (Section G.4.b.5.).

NOV Nos. 090916-1 and 091609-2 were issued to Crossroads.

8. On November 3, 2009, WVDEP personnel conducted an inspection of the construction operation. During the inspection, the following violation of Crossroads' WV/NPDES permit, Order No. 6551 and/or §22-11-1 et seq. were observed and documented in that Crossroads had failed to:
- a. Cease and Desist land development until violations have been abated and contact WVDEP Environmental Enforcement to arrange an inspection prior to restarting any development activities (§22-11-1 et seq.).
 - b. Submit a "Plan of Action" as required by Order No. 6551 (§22-11-1 et seq.).
 - c. Properly maintain all sections of silt fencing throughout the site (Section D.1.).
 - d. Stabilize all areas of disturbance within 7 days of reaching final grade or where construction activities have temporarily ceased, and reseed all areas where seed has failed to germinate adequately (Section G.4.e.2.A.i.).
 - e. To implement appropriate BMPs in that fill slopes are rilled and gullied, and haulroads are rutted and without water bars (Section G.4.e.2.A.ii.).
 - f. Stabilize all diversions immediately, and prior to, becoming functional (Section G.4.e.2.A.i.d.).
 - g. Comply with its SWPPP (Section B).
 - h. Install the required public notice sign (Section G.4.b.5.).

NOVs 091103-1 and 091103-2 were issued to Crossroads.

9. On November 24, 2009, WVDEP personnel reviewed the Crossroads' SWPPP. After review, it was determined that Crossroads has failed to modify permit coverage for additional areas of disturbance outside of the permitted area that extend beneath the power line which intersects US Route 19, a violation of the terms and conditions of its WV/NPDES permit (Section G.4.c.).

10. On March 15, 2010, Mr. James Buckland, Crossroads, met with WVDEP personnel to discuss the draft Order. During the meeting, the necessary corrective actions were discussed and Mr. Buckland indicated a desire to have the agency evaluate the ability to pay a civil administrative penalty. Subsequent to the meeting, Mr. Buckland submitted some of the necessary financial information. Upon review, the necessary additional information was requested from Mr. Buckland and he declined to provide it. Therefore, it was not possible to properly evaluate the ability to pay in accordance with US Environmental Protection Agency economic models.
11. On March 29, 2010, WVDEP received Crossroads' corrective action plan.
12. Crossroads has submitted complete financial information regarding its ability to pay a civil administrative penalty for the violations described in this Order. The financial information indicates that Crossroads has the ability to pay the civil administrative penalty included in 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. Crossroads shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and Order No. 6551.
2. Crossroads shall immediately, stabilize all areas throughout the site, and implement necessary BMPs to prevent the release of sediment laden waters from the site.
3. Upon review of the proposed corrective action plan, it is determined to be adequate and is approved with the following stipulations:
 - a. Crossroads will only conduct activities related to stabilization of the site and construction of necessary erosion control devices.
 - b. Any construction activities associated with development of the site or excavation for sale of off-site dirt is not approved and is a violation of Order No. 6551.
4. Because of Crossroads' West Virginia Code and permit violations, Crossroads shall be assessed a civil administrative penalty of sixteen thousand five hundred dollars (\$16,500) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following payment schedule:

Payment 1 in the amount of \$5,500 due on or before October 1, 2011
Payment 2 in the amount of \$5,500 due on or before November 1, 2011
Payment 3 in the amount of \$5,500 due on or before December 1, 2011

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
WVDEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Crossroads 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, Crossroads 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, Crossroads 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 Crossroads 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, Crossroads 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 Crossroads 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 Crossroads 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 Crossroads (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 Crossroads 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 Crossroads 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 Crossroads, its successors and assigns.
7. This Order shall terminate upon Crossroads' notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


James Buckland
Crossroads Land Development Co.

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Crossroads Land Development Co. Receiving Stream: North Sand Branch

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#												
			5a, 5b	7a	7b, 7c, 7d, 7e	7g	8a	8b	8c	8d, 8e, 8f	8h	9			
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1			
b)	Toxicity of Pollutant	0 to 3	1	1	1	0	1	1	1	1	0	1			
c)	Sensitivity of the Environment	0 to 3	1	1	1	0	1	1	1	1	0	1			
d)	Length of Time	1 to 3	1	2	1	2	2	3	1	1	3	1			
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	0	1	1	1	1	0	1			
Average Potential for Harm Factor			1	1.2	1	0.6	1.2	1.4	1	1	0.8	1	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	2	1	3	3	3	3	1	1			

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 $\leq 40\%$ for Avg. Monthly or $\leq 100\%$ for Daily Max., exceed numeric WQ standard by $\leq 100\%$, or report doesn't contain some minor information.

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

Major = exceedance of permit limit by $\geq 301\%$ for Avg. Monthly, $\geq 601\%$ for Daily Max., exceed numeric WQ standard by $\geq 601\%$, 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
5a, 5b	Minor	Major	\$2,000	2	\$4,000
7a	Moderate	Major	\$4,200	1	\$4,200
7b, 7c, 7d, 7e	Minor	Moderate	\$1,500	4	\$6,000
7g	Minor	Minor	\$600	1	\$600
8a	Moderate	Major	\$4,200	1	\$4,200
8b	Moderate	Major	\$4,400	1	\$4,400
8c	Minor	Major	\$2,000	1	\$2,000
8d, 8e, 8f	Minor	Major	\$2,000	3	\$6,000
8h	Minor	Minor	\$800	1	\$800
9	Minor	Minor	\$1,000	1	\$1,000
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
Total Base Penalty					\$33,200

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		\$9,960
6.2.b.4 - Compliance/noncompliance history	15		\$4,980
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,032		\$1,032
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		\$0
6.2.b.2 - Good Faith - Decrease			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay		98.5	(\$32,702)
Penalty Adjustments			(\$16,700)
Penalty =			\$16,500

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	\$1,032
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$1,032
Comments: Hydroseeding of +/-17.2 acres (\$60@acre) = \$1,032.	