

- b. Permittee failed to stabilize the inlet and outlet of the sediment trap. This is a violation of the WV/NPDES permit Section G.4.e.2.A.ii.c.

Notice of Violation No. 110-54-001-CJM and No. 110-54-002-CJM were issued.

3. On November 10, 2010, WVDEP personnel inspected the Sundowner Bridge site and observed and documented the following deficiencies:
 - a. Permittee failed to post an outlet marker at the discharge point of the sediment trap. This is a violation of the WV/NPDES permit Section C.15.
 - b. Permittee has eliminated a sediment trapping structure prior to the contributing drainage being stabilized at the borrow area. This is a violation of the WV/NPDES permit Section G.4.e.2.A.ii.g.

Notice of Violation No. 110-54-20-JCC and No. 110-54-21-JCC were issued.

4. On April 27, 2011, WVDEP personnel inspected the Sundowner Bridge site and observed and documented the following deficiencies:
 - a. Permittee failed to properly operate and maintain silt fence and sediment traps at the borrow area. This is a violation of the WV/NPDES permit Section D.1.
 - b. Permittee failed to reseed any area that failed to adequately germinate within 30 days, including several areas around the bridge. This is a violation of the WV/NPDES permit Section G.4.e.2.A.i.c.
 - c. Permittee failed to seed and mulch all areas where construction activity has ceased for more than 7 days, including the slopes of the borrow area. This is a violation of the WV/NPDES permit Section G.4.e.2.A.i.
 - d. Permittee has allowed sediment laden water to leave the site without first going through an appropriate Best Management Practice (BMP), including over the downed silt fence and around the stream/drainage crossing in the borrow area. This is a violation of the WV/NPDES permit Section G.4.e.2.A.ii.j.

Notice of Violation No. 111-54-002-JCC through No. 111-54-005-JCC were issued.

5. A meeting was held on July 13, 2011 between WVDEP and WVDOT's contractor Kelly Paving to discuss the terms 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. WVDOT shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within fifteen (15) days of entry of this Order, WVDOT shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion

dates for how and when WVDOT will achieve compliance with all terms and conditions of its WV/NPDES permit and/or pertinent laws and rules. 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 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.

3. Because of WVDOT's permit violations, WVDOT shall be assessed a civil administrative penalty of thirteen thousand six hundred fifty-five dollars (\$13,655) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

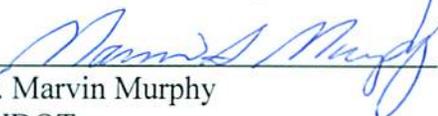
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

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



Mr. Marvin Murphy
WVDOT

8-1-11

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date



- Outlet marker needs to be posted at the discharge point of the sediment trap.



- Sediment trap prematurely removed at the borrow area.



- Borrow area is still disturbed and controls must remain in place, or be re-installed, until adequate stabilization is achieved.



- Sediment traps and silt fence are not being maintained at the borrow area/



- Erosion noted at the end of the stream/drainage crossing to the borrow area, leading off-site. No controls in place in this area.



- Borrow area has not been seeded and mulched, despite being disturbed for greater than 7 days at final grade.



- No controls on either end of the stream/drainage crossing.



- No controls on either end of the stream/drainage crossing.



- Silt fence not being properly maintained. Sediment overflowing down sections of silt fence and into existing ditch line.



- Erosion on the slope needs to be re-dressed and seeded and mulched.



- Silt fence not being properly maintained. Sediment overflowing downed sections of silt fence and into existing ditch line.



- Area on end of the bridge need to be re-seeded.



- Area on end of the bridge need to be re-seeded.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Sundowner Bridge

Receiving Stream:

Neal Run

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

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	Moderate	\$1,500	1	\$1,500
2b	Minor	Moderate	\$1,500	1	\$1,500
3a	Minor	Minor	\$400	1	\$400
3b	Minor	Moderate	\$1,500	1	\$1,500
4a	Minor	Moderate	\$1,500	1	\$1,500
4b	Minor	Moderate	\$1,500	1	\$1,500
4c	Minor	Moderate	\$1,500	1	\$1,500
4d	Minor	Moderate	\$1,500	1	\$1,500
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					\$10,900

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		\$1,090
6.2.b.4 - Compliance/noncompliance history	15		\$1,635
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			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$2,755
Penalty =			\$13,655

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:	