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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  
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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: Energy Contractors, LLC  
P.O.Box 4160  
Clarksburg, WV 26302

DATE: December 3, 2010

ORDER NO.: 7162

**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 Energy Contractors, LLC (hereinafter "Energy Contractors").

**FINDINGS OF FACT**

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

1. Energy Contractors provides the oil and gas industry with a variety of services including excavation, transportation, well servicing and fluid management. Energy Contractors operates one of its hauling services from a trucking terminal and bulk fluid storage facility located near Rt. 33 East of Weston, Lewis County, West Virginia.
2. Energy Contractors also operates facilities at Clendenin, WV, Bridgeport, WV, and Jane Lew, WV and is required to apply for coverage under the Multi-Sector General Water Pollution Control Permit.
3. On July 20, 2004 West Virginia Department of Environmental Protection (WVDEP) personnel performed an inspection at Energy Contractors in Weston, WV. This inspection revealed that Energy Contractors did not have coverage under the WV/ NPDES Multi-Sector General Water Pollution Control Permit. A warning was issued to Energy Contractors with instructions to apply for coverage under the Multi-Sector General Water Pollution Control Permit within thirty (30) days.

4. On June 28, 2010 , WVDEP personnel responded to a spill by Energy Contractors at its Weston, WV facility. Specifically, fluids containing petroleum products spilled onto the ground and into Stonecoal Creek, a tributary of the West Fork River. Further investigation revealed that the spill occurred on June 27, 2010 at approximately 16:00 and was not reported to the Office of Water Resources Emergency Notification Number until June 27, 2010 at 21:02, five hours after the spill; a violation of Legislative Rule Title 47, Series 11, Section 2 (47CSR11-2) requiring immediate notification. Notice of Violation (NOV) NW-SEW-I-062810-01 was issued.
5. On June 28, 2010. WVDEP personnel also conducted an inspection at Energy Contractors, Weston facility and determined that Energy Contractors did not have coverage under the Multi-Sector General Water Pollution Control Permit, a violation of WV Code Chapter 22, Article 11, Section 8(b)(1) (22-11-8(b)(1)). Additionally, WVDEP personnel also determined that a point source discharge from an oil water separator for the truck wash and a septic system was operating without a valid permit. NOV NW-SEW-I-062810-03 was issued.
6. During the June 28, 2010 inspection, WVDEP personnel determined Energy Contractors also allowed petroleum product to flow onto or under the ground in such a manner that could impact groundwater, a violation of 47CSR58-7. Specifically, the produced fluid tank battery secondary containment dike block wall was cracked and seeping petroleum product onto the ground adjacent to the tank battery, and the diesel fueling had a large fuel spillage stain on the ground adjacent to the pump. NOV NW-SEW-I-062810-02 was issued.
7. To date, Energy Contractors does not possess a valid WV/NPDES permit for any facilities located in WV.

### **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. Within thirty (30) days of entry of this order Energy Contractors shall apply for the appropriate WV/NPDES permit for all facilities located in WV.
2. Within thirty (30) days of entry of this Order, Energy Contractors shall submit for approval, a proposed corrective action plan and schedule, outlining action items and completion dates for how and when Energy Contractors will remediate the petroleum product spillage around the bulk tank storage secondary containment dike and diesel fuel fueling area at its Weston location. This corrective action plan will include what Energy Contractors plans to do to correct the leaking secondary containment dike used for the tank battery at its Weston location. This corrective action plan will also include what is planned to correct the direct discharge of untreated sewage and oil/water separator wastewater to Stonecoal Creek at its Weston location. The corrective action plan shall be submitted to:

**Environmental Inspector Supervisor  
NW Regional Environmental Enforcement Office  
2031 Pleasant Valley Road  
Fairmont, WV 26554**

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

3. Because of Energy Contractors' West Virginia Code and Legislative Rule violations, Energy Contractors shall be assessed a civil administrative penalty of nine thousand four hundred thirty dollars (\$9,430) 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

**OTHER PROVISIONS**

1. Energy Contractors 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, Energy Contractors 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, Energy Contractors 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 Energy Contractors 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, Energy Contractors 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 Energy Contractors 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 Energy Contractors 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 Energy Contractors (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 Energy Contractors 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 Energy Contractors 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 Energy Contractors, its successors and assigns.

7. This Order shall terminate upon Energy Contractors' notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



\_\_\_\_\_  
Energy Contractors, LLC

12/13/2010

\_\_\_\_\_  
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:

Energy Contractors

Receiving Stream:

Stone Coal Creek

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#											
			4	5	7									
a)	Amount of Pollutant Released	1 to 3	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	1	0									
c)	Sensitivity of the Environment	0 to 3	1	1	1									
d)	Length of Time	1 to 3	1	2	3									
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1									
<b>Average Potential for Harm Factor</b>			1	1.2	1.2	No								
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	1	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.





## 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 -			\$0
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			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$30</b>
<b>Penalty =</b>			<b>\$9,430</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>	