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ENVIRONMENTAL
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west virginia department of environmental protection

Division of Water and Waste Management
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Charleston, WV 25304
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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: Gastar Exploration USA, Inc.
Michael McCown P.E.
Vice President, Northeast
229 W. Main Street, Suite 301
Clarksburg, WV 26301

DATE: March 17, 2011

ORDER NO.: 7155

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 Gastar Exploration USA, Inc. (hereinafter "Gastar").

FINDINGS OF FACT

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

1. Gastar operates a gas well located near Plum Run, Marion County, West Virginia identified as Fluharty 2 with an API number of 4901304. A tank battery with five tanks is located adjacent to Fluharty 2 (the "Tank Battery"). Four of the tanks hold oil or oil and brine in suspension and have a capacity of 100 barrels each. The fifth tank has a capacity of 210 barrels and holds brine.
2. On August 4, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel responded to a complaint of black water and a fish kill on Plum Run in Marion County near Fluharty 2 and the Tank Battery.
3. During their investigation on August 4, 2010, WVDEP personnel observed and documented the following:
 - a. The Tank Battery had a secondary containment drain line that discharges to Plum Run.

- b. The secondary containment had recently been emptied.
 - c. A brine tank was also connected to the secondary containment drain line.
 - d. The drain line and brine connection are controlled by multiple valves, some of which were broken, defective, or unused.
 - e. A Gastar representative confirmed that brine from the brine tank had been released into the secondary containment drain line and subsequently flowed into Plum Run, a water of the State. The Gastar representative represented to WVDEP personnel that the release was unintentional.
4. Upon learning of the release Gastar immediately initiated measures to contain and clean up the spill. WVDEP personnel responding to and investigating the release indicated that Gastar had taken appropriate steps to contain and clean up the spill.
 5. The discharge of brine from the Tank Battery caused conditions not allowable in waters of the state, a violation of Legislative Rule, Title 47, Series 2, Section 3 (47CSR2-3). Specifically, the discharge caused a black, gritty color in Plum Run. Notice of Violation (NOV) W-NW-KAP-080410-001 was issued.
 6. Dead fish in Plum Run was the result of pollutants produced and/or emanating from the brine storage tank in the Tank Battery, a violation of 47CSR2-3.2.e. NOV W-NW-KAP080410-001 was issued.
 7. WVDEP personnel also determined that, although a Gastar representative did notify the oil and gas inspector responsible for inspecting Fluharty 2 and the Tank Battery upon learning of the release, immediate notification of the spill was not provided to the WVDEP's Emergency Notification Number, a violation of its 47CSR11-2. NOV W-NW-KAP-080410-002 was issued.
 8. After responding to the release, Gastar removed the line between the brine tank and the secondary containment line and made other repairs and alterations to minimize the potential for future accidental discharges from Fluharty 2.
 9. Gastar has represented that it has informed its field personnel and contractors that brine is not to be intentionally discharged to a surface water and that it has reviewed proper disposal procedures for brines and other waste materials generated at its oil and gas wells.
 10. A meeting between WVDEP and Gastar was held on January 10, 2011 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. Gastar shall immediately take all measures to initiate procedures for the prompt reporting of spills and accidental discharges as required by applicable laws and regulations.
2. Within thirty (30) days of entry of this Order, Gastar shall submit for approval a proposed corrective action plan and schedule ("CAP") to implement the requirements of paragraphs 3 through 6 of the Order for Compliance and shall additionally submit a "Spill and Accidental Discharge Reporting and Response Plan" ("Reporting Plan") outlining how Gastar will ensure prompt identification of and reporting of spills and accidental discharges at its well sites in West Virginia and establishing a standard operating procedure for responding to spills or accidental releases. The Reporting Plan shall also provide details regarding the training that will be given to Gastar employees or contractors who work at well sites regarding reporting and responding to spills and accidental discharges. The CAP and Reporting Plan shall be submitted to:

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

A copy of this CAP and Reporting Plan shall be submitted to:

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

Upon approval, the CAP shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit a CAP or failure to adhere to the approved schedule in the CAP is a violation of this Order.

3. Within thirty (30) days of approval of the Plan, Gastar shall implement the training program described in the Plan for all employees and contractors working at well sites in West Virginia for spill identification, reporting and response.
4. Within ninety (90) days of entry of this Order, Gastar shall provide proof that Gastar employees and contractors working at well sites in West Virginia have been trained pursuant to the approved training program.
5. Within thirty (30) days of entry of this Order, Gastar shall evaluate the need for and undertake any additional repairs or make any other necessary alterations to minimize the potential for an accidental release of pollutants at Fluharty 2 and the Tank Battery.
6. Within thirty (30) days of entry of this Order, Gastar shall provide written protocols, procedures and/or practices explaining how brine, storm water and any other removed waste is removed, handled and disposed from Fluharty 2 and other oil and gas wells operated by Gastar which deliver oil, gas, and produced water to the Tank Battery.

7. Because of Gastar's Legislative Rule violations, Gastar shall be assessed a civil administrative penalty of ten thousand five hundred and sixty dollars (\$10,560) 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. Gastar 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, Gastar 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, Gastar 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 Gastar 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, Gastar 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 Gastar 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 Gastar 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 Gastar (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 Gastar 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 Gastar 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 Gastar, its successors and assigns.
7. This Order shall terminate upon Gastar's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Michael McCown
Gastar Exploration USA, Inc.
Michael McCown P.E.
Vice President, Northeast

3 / 18 / 2011
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:

Gastar Exploration Ltd.

Receiving Stream:

Plum Run Creek

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#											
			4	5	6									
a)	Amount of Pollutant Released	1 to 3	2	2	1									
b)	Toxicity of Pollutant	0 to 3	3	3	0									
c)	Sensitivity of the Environment	0 to 3	1	1	0									
d)	Length of Time	1 to 3	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	3	3	0									
Average Potential for Harm Factor			2	2	0.4	No								
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	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.

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		10	(\$1,170)
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$1,140)
Penalty =			\$10,560

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:	