



west virginia department of environmental protection

Division of Water and Waste Management
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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: Shaun Glaspell
Glaspell Lumber Company
Pike Fork Rd.
Salem, WV 26426

DATE: January 20, 2011

ORDER NO.: 7166

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 Glaspell Lumber Company (hereinafter "Glaspell Lumber").

FINDINGS OF FACT

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

1. Glaspell Lumber is an operating sawmill adjacent to Pike Fork Creek in Doddridge County, West Virginia. It is covered by West Virginia National Pollutant Discharge Elimination System (WV/NPDES) Industrial Storm Water Permit No. WV0111457, General Permit Registration No. WVG610280 reissued October 23, 2009.
2. In addition to sawing logs into lumber at the Pike Fork Creek facility, Glaspell Lumber also operates a bark mulch shredding, dying and storage facility on Franks Run in Doddridge County. This facility is not covered under a WV/NPDES Industrial Storm Water Permit.
3. On June 17, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel investigated a complaint that Franks Run Creek in Doddridge County was black for about one and one-half miles. The complainant reported that the source of the contamination originated at a mulching facility upstream on Franks Run Road.

4. Upon further investigation on June 17, 2010, WVDEP personnel investigated the complaint and documented the following:
 - a. Glaspell Lumber was operating a sawmill with associated industrial activity including bark mulch storage, bark mulch dye storage, and bark mulch dyeing.
 - b. The bark mulch operation at Glaspell Lumber was causing a black color in Franks Run, a violation of West Virginia Legislative Rule Title 47, Series 2, Section 3 (47CSR2-3). Notice of Violation (NOV) No. W-NW-JME-061710-001 was issued.
 - c. Glaspell Lumber was operating without a valid WV/NPDES Industrial Storm Water Permit, a violation of West Virginia Code Chapter 22, Article 11, Section 1 et seq. (22-11-1). NOV No. W-NW-JME-061710-002 was issued.
5. On June 18, 2010, WVDEP personnel met with representatives from Glaspell Lumber at its Doddridge County mill site and documented the following:
 - a. WVDEP observed a new source of black dye leaching from the hillside at Glaspell Lumber and into Franks Run Creek, a violation of 47CSR3-2. NOV No. W-NW-JME-061810-002 was issued.
 - b. Glaspell Lumber knew about the release of black dye into Franks Run Creek since June 16, 2010 and failed to report it to the WV Spill Hotline, a violation of 47CSR11-2. NOV No. W-NW-JME-061810-001 was issued.
6. On January 11, 2011 a meeting was held between WVDEP and Glaspell Lumber to discuss the terms of this Order. Glaspell Lumber provided documentation demonstrating that the dye at its facility is biodegradable and non-toxic. Glaspell Lumber has obtained a WV/NPDES permit for its Franks Run facility. Glaspell needs to determine if its current permit needs modified to reflect current site conditions.

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 twenty (20) days of entry of this Order, Glaspell Lumber shall contact WVDEP-DWWM Permitting Section to determine if a WV/NPDES permit modification is needed for its Franks Run facility.
2. Within fifteen (15) days of entry of this Order, Glaspell Lumber shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Glaspell Lumber will achieve compliance with all pertinent laws and rules. The plan of corrective action shall be submitted to:

**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.

3. Glaspell Lumber shall immediately notify the WV Spill Hotline of all future spills and releases.
4. Glaspell Lumber shall not operate its wood chip dye operation within any area subject to flooding or uncontrolled storm water events. All operations must be contained in an established zone demarcated for the dye operations and at least fifty feet from any stream, creek, tributary or diversion.
5. Because of Glaspell Lumber West Virginia Code and Legislative Rule violations, Glaspell Lumber Company shall be assessed a civil administrative penalty of six thousand eighty dollars (\$6,080) 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 \$2,028 due on or before April 1, 2011.

Payment 2 in the amount of \$2,026 due on or before May 1, 2011.

Payment 3 in the amount of \$2,026 due on or before June 1, 2011.

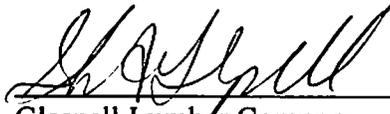
Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

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

OTHER PROVISIONS

1. Glaspell Lumber 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, Glaspell Lumber 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, Glaspell Lumber 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 Glaspell Lumber's 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, Glaspell Lumber 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 Glaspell Lumber 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 Glaspell Lumber 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 Glaspell Lumber (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 Glaspell Lumber 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 Glaspell Lumber 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 Glaspell Lumber, its successors and assigns.

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



Glaspell Lumber Company

3/24/11

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: Glaspell Lumber Company Receiving Stream: Franks Run in Doddridge County

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#											
			4b	4c	5b									
a)	Amount of Pollutant Released	1 to 3	2	1	1									
b)	Toxicity of Pollutant	0 to 3	0	0	0									
c)	Sensitivity of the Environment	0 to 3	1	0	0									
d)	Length of Time	1 to 3	1	1	2									
e)	Actual Exposure and Effects thereon	0 to 3	1	0	0									
Average Potential for Harm Factor			1	0.4	0.6	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 -	10		\$550
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 increase)			\$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			\$580
Penalty =			\$6,080

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:	