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west virginia department of environmental protection

Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
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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: Leducor Pipeline  
Joseph Marljar, Project Manager  
1720 N. Sam Houston Parkway E.  
Houston, TX 77032

DATE: February 24, 2011

ORDER NO.: 7169

**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 Leducor Pipeline (hereinafter "Leducor").

**FINDINGS OF FACT**

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

1. Leducor is providing site development services for Energy Transfer Company in the Marshville area of Harrison County by installing in excess of thirteen miles of twenty-inch gas pipeline.
2. Leducor contracted Southeast Drilling to assist with pipeline installation. Specifically, Leducor or a contractor thereof, operates a horizontal boring machine for directional drilling in areas where gas pipeline will be installed without ground surface disturbance. Sodium Bentonite slurry (drilling mud) is pumped under pressure into the horizontal bore hole to stabilize the sides and provide lubrication whereas the string of pipe is thence pulled through. Without geological investigation or evaluation, the drilling mud may escape the borehole through cracks, fissures, pores and/or other geological fractures and percolate to the ground surface.
3. On August 8, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel received a complaint regarding mud associated with pipeline construction

Promoting a healthy environment.

related activity in Katy Lick Run, a tributary of Tenmile Creek, a tributary of the West Fork River in Harrison County.

4. On August 9, 2010, WVDEP personnel received a report from Harrison County Emergency Services regarding mud percolating up in Katy Lick Run on August 7, 2010.
5. On August 9, 2010, WVDEP personnel investigated the complaint and discovered that Ledcor, or a contractor thereof, released drilling mud into Katy Lick Run as a result of activities associated with horizontal boring activity near County Route 7 (Site 1) and documented the following:
  - a. Ledcor was diverting stream flow around the spill area in an effort to minimize impact.
  - b. Katy Lick Run was muddy from unstablized material eroding from the stream diversion and colored grey from the release of drilling mud causing conditions not allowable in State Waters, a violation of West Virginia Legislative Rule, Title 47, Series 2, Section 3 (47CSR2-3). Notice of Violation (NOV) NW-JME-080910-001 was issued.
  - c. Ledcor established containment around the drilling mud and recycled the material back to the boring activity with a pump truck.
  - d. Immediate notification was not provided to the WVDEP Spill Hotline, a violation of 47CSR11-2. NOV NW-JME-080910-002 was issued.
  - e. WVDEP discovered a finished boring site along County Route 5 at the Fred Ross access road and observed evidence that drilling mud had migrated off-site and into Tenmile Creek (Site 2), a violation of 47CSR2-3. NOV NW-JME-080910-004 was issued.
6. On August 12, 2010, WVDEP personnel inspected the Marshville area of Harrison County and documented the following:
  - a. Drilling mud had percolated to the ground surface at a new location along Katy Lick Run (Site 3).
  - b. Ledcor contained the drilling mud by allowing it to enter the previously constructed containment device at Site 1.
7. On August 20, 2010, Ledcor notified WVDEP that remediation was taking place at Katy Lick Run Site 1 and 3 and that all horizontal boring on County Route 7 was completed. Further investigation by WVDEP personnel revealed the following:
  - a. Ledcor removed the containment device from Site 1.
  - b. Ledcor claimed remediation at Site 1 and 3 was partially completed.
  - c. Drilling mud was evident on and in Katy Lick Run at Site 1 and continued to create conditions not allowable in State Waters.
8. On August 23, 2010, WVDEP personnel met with Ledcor to discuss previously issued violations at Sites 1 and 3, unsatisfactory remediation of the drilling mud at Katy Lick Run, and the need to report all spills to the WV Spill Hotline. Ledcor responded that it planned to start horizontal drilling at Victory Lane south of Marshville in Harrison

- County. WVDEP personnel also observed and documented a red filamentous substance growing where the drilling mud containment was located in Katy Lick Run at Site 1.
9. On August 25, 2010, Ledcor notified WVDEP of a release of drilling mud near the drilling rig located off Victory Lane in Harrison County (Site 4). WVDEP responded to the spill and documented the following:
    - a. Drilling mud came through the ground surface at several locations and did not enter the nearby stream (New Creek).
    - b. Ledcor established containment around the drilling mud and recycled it back to the boring process with a pump truck.
    - c. Ledcor diverted New Creek, a tributary of Ten Mile Creek of the West Fork River, as a precautionary measure to prevent the drilling mud from entering into State Waters.
  10. On August 25, 2010, Ledcor notified WVDEP of a second release of drilling mud at a second location near Victory Lane in Harrison County (Site 5). WVDEP responded to the spill and documented the following:
    - a. New Creek (for about a quarter of a mile) and Tenmile Creek were grey in color and contained drilling mud, a violation of 47CSR2-3. NOV NW-JME-082510-001 was issued.
    - b. Ledcor initiated remediation activities of the drilling mud in New Creek.
  11. On August 26, 2010, WVDEP personnel investigated all spill sites and documented the following:
    - a. Further remediation was necessary at Sites 1 & 3.
    - b. The red filamentous substance is still present in the stream.
    - c. WVDEP noted to the need for better Erosion and Sediment control practices around the construction sites.
    - d. WVDEP stated to Ledcor the need for further remediation of drilling mud from the mouth where New Creek entered Tenmile creek.
    - e. WVDEP observed Ledcor initiating remediation efforts to remove drilling mud at the mouth of New Creek.
  12. Further investigation and observations by WVDEP personnel near the spill areas reveal a filamentous material growing within the stream at Sites 1, 3 and 5.
  13. On September 16, 2010, WVDEP personnel inspected Ledcor construction activity and documented a significant plume of sediment and muddy water entering into Tenmile Creek during a storm event and causing conditions not allowable in State Waters, a violation of 47CSR2-3. Specifically, Ledcor failed to install adequate and necessary erosion and sediment control structures to prevent excessive displacement of soils. NOV NW-JME-091610-001 was issued.
  14. In the afternoon of October 19, 2010, Leadcor caused a spill of several hundred gallons of crude oil during pipeline construction activities. At 10:20 am the following morning,

Ledcor notified the WV Spill Hotline. Ledcor failed to immediately notify the WV Spill Hotline, a violation of 47CSR11-2. NOV NW-JME-102010-001 was issued.

15. A meeting was held between WVDEP and Ledcor on January 21, 2011 to discuss the terms of this Order. It was determined that the spill of crude oil described above in Finding of Fact No. 14 did not enter state waters, therefore this violation has been withdrawn.

### **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. Ledcor shall immediately take all measures to initiate compliance with all applicable laws and/or rules.
2. Immediately upon entry of this Order, Ledcor shall submit a Plan of Action and schedule for approval outlining action items and completion dates for how and when Ledcor will achieve compliance with all pertinent laws and rules. The Plan of Action shall also describe how Ledcor plans to prevent/control the release of drilling mud and sediment from leaving current and future construction projects and causing conditions not allowable in State Waters.
3. Within thirty (30) days of entry of this Order, Ledcor shall submit two (2) copies of a detailed, accurate, and appropriate scaled diagram or map prepared and approved by a West Virginia Registered Professional Engineer with the following details:
  - a. Locations of all drill mud releases (frac outs) since the pipeline installation project started including those which entered into State Waters and those that did not.
  - b. Location of existing pipeline and future pipelines including all major political districts, highways, major topographical or geological features, streams and property boundaries as known.
  - c. Location of all planned, previous and current boring locations.
4. Documents required by Order for Compliance Nos. 2 and 3 of this Order shall be submitted to:

**Environmental Inspector Supervisor  
NW Environmental Regional 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 Plan of 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 Action and schedule or failure to adhere to the approved schedule is a violation of this Order.

5. Because of Ledcor's Legislative Rule violations, Ledcor shall be assessed a civil administrative penalty of twenty-four thousand five hundred ten dollars (\$24,510) 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. Ledcor 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, Ledcor 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, Ledcor 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 Ledcor 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, Ledcor 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 Ledcor 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 Ledcor 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 Ledcor (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 Ledcor 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 Ledcor 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 Ledcor, its successors and assigns.
7. This Order shall terminate upon Ledcor's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
\_\_\_\_\_  
~~Joseph Marlar~~ KEVIN CARTER  
Ledcor Pipeline PRESIDENT

3-7-11  
\_\_\_\_\_  
Date

Public Notice begin: \_\_\_\_\_  
Date

Public Notice end: \_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

Photo 1.) Ledcor Site - Victory Lane; downstream of New Creek of Tenmile Creek.



Photo 2.) Ledcor Site - Victory Lane.



Photo 3.) Ledcor Site - Victory Lane; upstream of New Creek of Tenmile Creek.



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Photo 4.) Ledcor site – Fred Ross  
access road.



Photo 5.) Ledcor site – Fred Ross  
access road; ditchline leading into  
Tenmile Creek.



Photo 6.) Tenmile Creek at Ledcor  
Fred Ross access road.



Photo 7.) Ledcor Site – Katy Lick Rd.



Photo 8.) Ledcor Site – Katy Lick Rd; downstream of Katy Lick Run of Tenmile Creek.



Photo 9.) Ledcor Site – Katy Lick Rd; upstream of Katy Lick Run of Tenmile Creek.



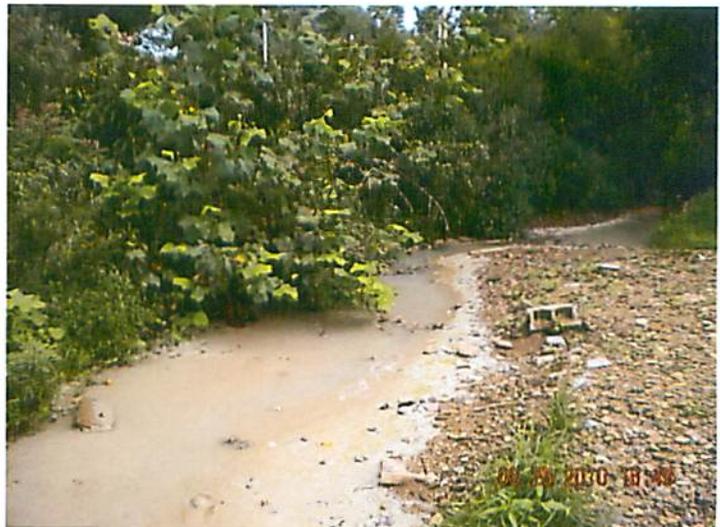
Photo 10.) Ledcor Site #1 on 8-12-10.



Photo 11.) Ledcor Site #1 on 8-26-10.



Photo 12.) Ledcor Site #5 on 8-25-10.



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Photo 13.) Ledcor Site #5 on 9-7-10.



## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Ledcor

Receiving Stream:

Katy Lick Run of Tenmile Creek,  
and Tenmile 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#											
			5b,5e,10a,	5d										
a)	Amount of Pollutant Released	1 to 3	3	1										
b)	Toxicity of Pollutant	0 to 3	1	0										
c)	Sensitivity of the Environment	0 to 3	2	0										
d)	Length of Time	1 to 3	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	2	0										
<b>Average Potential for Harm Factor</b>			1.8	0.4	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	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.





## 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 -	20		\$4,080
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>\$4,110</b>
<b>Penalty =</b>			<b>\$24,510</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>	