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west virginia department of environmental protection

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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  
[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: Monongalia County Development Authority  
Holly Childs, Director  
955 Hartman Run Road, Suite 200  
Morgantown, WV 26505

DATE: April 2, 2015

ORDER NO.: 8218

**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 Monongalia County Development Authority.

**FINDINGS OF FACT**

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

1. Monongalia County Development Authority is conducting land disturbance activity in Morgantown, Monongalia County, West Virginia. On January 14, 2011, Monongalia County Development Authority was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR105263.
2. On June 17, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Monongalia County Development Authority's WV/NPDES permit were observed and documented:
  - a. 47CSR2 Sections 3.2.a and b-Monongalia County Development Authority caused conditions not allowable in waters of the State by creating a distinctly visible plume and settleable solids in the form of sediment deposits in the receiving stream. Specifically, visible plumes were detected where West Run passes through the project area from the south and where a pumping operation through a filter bag was occurring

Promoting a healthy environment.

- on the bank of West Run. Thick sediment deposits were apparent immediately downstream of the filter bag discharge point into West Run.
- b. B-The Permittee failed to comply with the approved Storm Water Pollution Prevention Plan (SWPPP). Erosion and sediment (E&S) control devices were not in place throughout the site, as detailed in the approved SWPPP.
  - c. D.1-The Permittee failed to properly operate and maintain all facilities and systems of treatment and control. Specifically, several E&S controls were not properly installed or maintained throughout the project.
  - d. G.4.e.2.A.ii.j-The Permittee allowed sediment-laden water to leave the site without going through an appropriate device. Specifically, erosion rills and gulleys lead toward areas where waters of the State pass through the project area, and inadequate or no E&S control devices were provided.
  - e. G.4.b.8-The Permittee failed to display a sign near the entrance of the project.
  - f. G.4.c-The Permittee failed to modify the SWPPP whenever there was a change in design, construction, scope of operation, or maintenance which had the potential to adversely impact the surface waters of the State. Specifically, waters of the State were entering into and passing through the project area differently than detailed in the approved SWPPP.
  - g. G.4.e.1.E-The Permittee failed to maintain a stone access entrance to reduce the tracking of sediment onto public or private roads.
  - h. G.4.e.2.D.i-The Permittee failed to inspect and clean debris originating from the construction site from all public and private roads adjacent to the construction entrance.
  - i. G.4.e.2.A.i-The Permittee failed to initiate stabilization measures, such as seed and mulch, on portions of the site where construction activities had temporarily or permanently ceased for greater than seven (>7) days and had not or would not resume within fourteen (14) days.
  - j. G.4.e.2.A.i.c-The Permittee failed to reseed areas where the seed failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within thirty (30) days.
  - k. G.4.e.2.A.ii.f-The Permittee failed to protect fill slopes by diverting runoff away from fill slopes to conveyance measures such as pipe slope drains or stable channels.
  - l. G.4.e.2.D-The Permittee failed to establish a maintenance plan and provide that all E&S controls on site were inspected at least once every seven (7) calendar days and within twenty-four (24) hours after any storm of greater than 0.5 inches of rain per twenty-four (24) hour period.
  - m. G.4.e.2.C.v-The Permittee failed to maintain a tracking procedure to ensure that adequate corrective actions were taken in response to deficiencies identified during the above mentioned E&S control inspections. In addition, the Permittee failed to maintain records of said inspections onsite and available to the inspector.

As a result of the aforementioned violations, nine (9) warnings and Notice of Violation (NOV) Nos. W-NW-TWH-061714-005, W-NW-TWH-061714-006, W-NW-TWH-061714-007, and W-NW-TWH-061714-008 were issued to Monongalia County Development Authority.

3. On July 23, 2014, WVDEP issued Order No. 8123 to Monongalia County Development Authority in response to the aforementioned violations. The Order required Monongalia County Development Authority to:
  - a. Immediately cease and desist land development activity until all erosion and sediment control devices are installed according to its WV/NPDES permit and SWPPP, as determined by WVDEP personnel.
  - b. Immediately install and maintain necessary erosion and sediment control devices to prevent the release of sediment-laden water into waters of the State.
  - c. Within ten (10) days of the effective date of the Order, submit a plan of corrective action and schedule, outlining action items and completion dates for how and when Monongalia County Development Authority will achieve compliance with all pertinent laws and rules.
4. On August 1, 2014, WVDEP personnel conducted a follow-up inspection of the facility. The cease and desist requirement of Order No. 8123 was lifted upon the basis of this inspection, because all erosion and sediment control devices had been installed according to Monongalia County Development Authority's WV/NPDES permit and SWPPP.
5. On February 11, 2015, WVDEP personnel and representatives of Monongalia County Development Authority met to discuss the terms and conditions 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. Monongalia County Development Authority shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Because of Monongalia County Development Authority's Legislative Rule and permit violations, Monongalia County Development Authority shall be assessed a civil administrative penalty of thirty-eight thousand three hundred forty-four dollars (\$38,344) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and 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. Monongalia County Development Authority 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, Monongalia County Development Authority 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, Monongalia County Development Authority 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 Monongalia County Development Authority 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, Monongalia County Development Authority 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 Monongalia County Development Authority becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Monongalia County Development Authority 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 Monongalia County Development Authority 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 Monongalia County Development Authority (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 Monongalia County Development Authority 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 Monongalia County Development Authority 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 Monongalia County Development Authority, its successors and assigns.
7. This Order shall terminate upon Monongalia County Development Authority's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Holly B. Childs  
Holly Childs, Director  
Monongalia County Development Authority

04/13/15  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

*revised March 2013*

**RECEIVED**

APR 15 2015

ENVIRONMENTAL  
ENFORCEMENT



P6170851  
Morgantown Municipal Airport Access



P6170852  
Settleable solids resulting from project area in waters of the State



P6170856

Visible plume resulting from project area in waters of the State



P6170862

Pit containing sediment-laden water adjacent to stream by-pass being pumped out



P6170864

Heavy sedimentation escaping pumping area into waters of the State



P6170866

Pit being pumped into filter bag that has been place on the stream bank



P6170870

Filter bag on stream bank discharging thick sediment plume to waters of the State



P6170872

Waters of the State running relatively clear upstream of filter bag discharge



P6170873

Filter bag discharge causing a distinctly visible plume in waters of the State



P6170875

Thick sediment deposits in West Run immediately downstream of the filter bag discharge



P6170877

West Run being by passed around project area



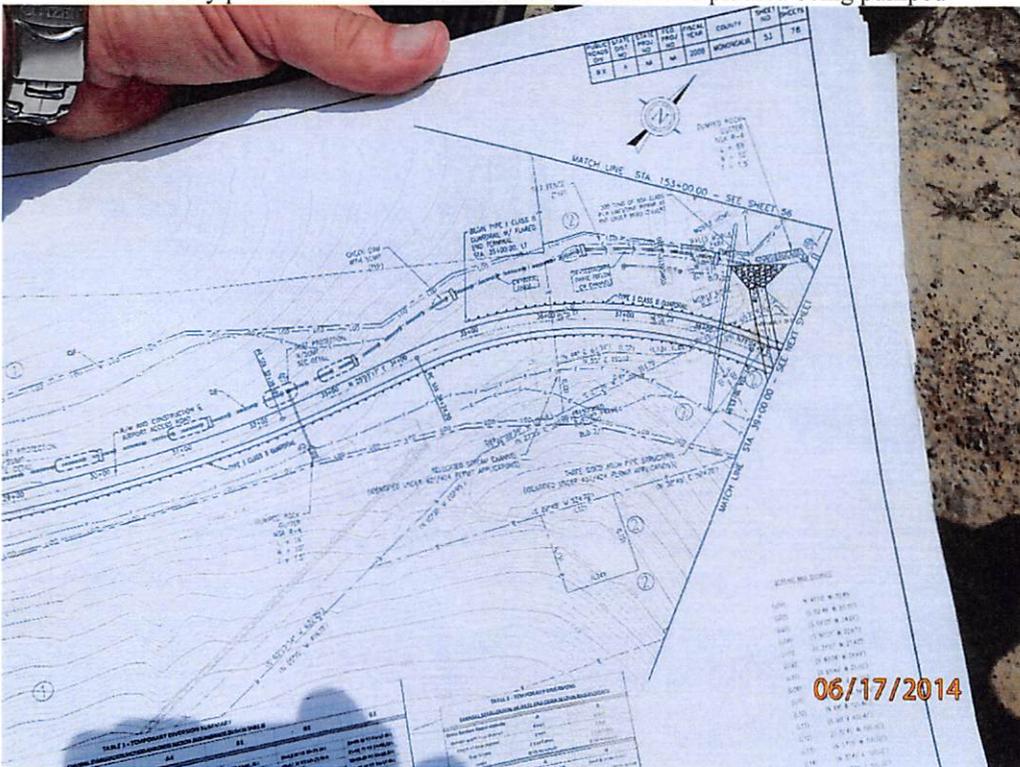
P6170879

Settleable solids being placed into West Run by pass channel



P6170881

West Run by pass channel with evidence of over flow into pit area being pumped



P6170882

Main E&S controls for project are several sump/rock check controls with drop inlet protection



P6170889

Drop inlet protection not properly installed or maintained



P6170890

Waters of the State entering project area without proper E&S controls in place



P6170893

Waters of the State being passed through rubble from the disturbed project area



P6170894

Waters of the State being passed through rubble from the project area w/o proper E&S controls



P6170897

Project area with no sump/rock check controls in place or seeding and mulching practices



P6170898

Project area with no sump/rock check controls in place or seeding and mulching practices



P6170899

Diversion with no sump/rock check controls picking up State waters at head of culvert pipe



P6170900

Waters of the State entering project area without properly maintained E&S controls in place



P6170901

Waters of the State entering project area without properly maintained E&S controls in place



P6170902

Diversion with no sump/rock check controls picking up State waters at head of culvert pipe



P6170903

Erosion occurring over fill slope over running super silt fence toward waters of the State



P6170904

Erosion occurring over fill slope over running super silt fence toward waters of the State



P6170906

Project area with no sump/rock check controls in place or seeding and mulching practices



P6170908

Super silt fence receiving too large of a drainage area not maintained along waters of the State



P6170911

Drop inlet protection not properly installed or maintained



P6170913

Large amount of settleable solids in waters of the State



P6170917

Large amount of settleable solids in waters of the State



P6170918

Super silt fence draining too large of an area being overrun along waters of the State



P6170921

Waters of the State entering project area without properly maintained E&S controls in place



P6170923

Fill slope erosion overrunning silt fence and entering waters of the State



P6170929

Drop inlet protection not properly installed or maintained



P6170934

Waters of the State entering project area without properly maintained E&S controls in place

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Monongalia County Dev Authority Receiving Stream: West 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#												
			2.a.	2.b.	2.c.	2.d.	2.e.	2.f.	2.g.	2.h.	2.i.	2.j.	2.k.	2.l.	2.m.
a)	Amount of Pollutant Released	1 to 3	2	1	1	2	1	1	1	1	1	1	1	1	1
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	0	0	1	1	1	1	1	0	0
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	0	0	1	1	1	1	1	0	0
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1	1
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	0	0	1	1	1	1	1	0	0
<b>Average Potential for Harm Factor</b>			1.2	1	1	1.2	0.4	0.4	1	1	1	1	1	0.4	0.4
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>													
	Degree of Non-Compliance	1 to 3	3	3	3	3	3	3	3	3	3	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 -	20		\$5,840
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$9,114		\$9,114
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	(\$2,920)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,920)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$9,144</b>
<b>Penalty =</b>			<b>\$38,344</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	\$9,114
Permit Application or Modification	
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$9,114</b>
<b>Comments:</b>	Avoided costs of seeding/mulching and installation of pollution control equipment (diversion ditches, rock check dams, wattles, etc.)