



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
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Harold Hatfield - Superintendent
Putnam County Board of Education
9 Courthouse Drive
Winfield, WV 25213

DATE: July 25, 2011

ORDER NO.: 7366

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 Putnam County Board of Education (hereinafter "Putnam BOE").

FINDINGS OF FACT

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

1. Putnam BOE operates a land disturbance associated with construction activity, referred to as Confidence Elementary School located near Confidence, Putnam County, West Virginia. Putnam BOE was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR105118 on August 26, 2010.
2. On September 9, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel inspected the site and observed the following deficiencies:
 - a. Putnam BOE failed to modify the approved Storm Water Pollution Prevention Plan (SWPPP) when there was a change in design, construction, scope of operation or maintenance which has a significant effect on the potential for the discharge of pollutants to waters of the State, to include all land disturbance on the east side of the construction entrance. The erosion and sediment control plan does not include the area east of the entrance. This is a violation of its WV/NPDES permit Section G.4.c.

Promoting a healthy environment.

- b. Solid waste was openly burned on-site. This is a violation of Section G.4.e.2.C.i of its WV/NPDES permit.
- c. Several sediment and erosion control devices were not in place as described in the approved SWPPP, including silt fence on the southeast side of the project, silt fence near the entrance, as well as silt fence around the soil stockpile on the south end. This is a violation of its WV/NPDES permit Section B.
- d. The outlet of sediment basin 2, on the western side of the site, was not stabilized. This is a violation of its WV/NPDES permit Section G.4.e.2.A.ii.b.
- e. The required public notice sign was not displayed near the entrance to the site, for the duration of the project. This is a violation of its WV/NPDES permit Section G.4.b.5.
- f. Outlet markers were not posted at the discharge points of both sediment traps. This is a violation of its WV/NPDES permit Section C.15.

Notices of Violation I10-40-030-JHH through I10-40-035-JHH were issued.

3. On October 25, 2010, WVDEP personnel inspected the site and observed the following deficiencies:
 - a. Putnam BOE failed to modify the approved SWPPP when there was a change in design, construction, scope of operation or maintenance which has a significant effect on the potential for the discharge of pollutants to waters of the State, to include all land disturbance on the east side of the construction entrance. The erosion and sediment control plan does not include the area east of the entrance. This was noted during the previous inspection. This is a violation of its WV/NPDES permit Section G.4.c.
 - b. Solid waste was openly burned on-site. This was noted during the previous inspection. This is a violation of Section G.4.e.2.C.i of its WV/NPDES permit.
 - c. Several sediment and erosion control devices were not in place as described in the approved SWPPP, including silt fence at the bottom of the disturbed slope along County Route 34, silt fence around the soil stockpile, outlet stabilization of the western sediment trap (Trap 2), as well as the diversions to both sediment traps. This is a violation of its WV/NPDES permit Section B.
 - d. All areas where construction activities ceased for more than 7 days were not temporary seeded and mulched, including the fill slopes above both sediment traps. This is a violation of its WV/NPDES permit Section G.4.e.2.A.i.

Notices of Violation I10-40-036-JHH through I10-40-039-JHH were issued.

4. On April 18, 2011, WVDEP personnel inspected the site and observed the following deficiencies:
 - a. Putnam BOE failed to modify the approved SWPPP when there was a change in design, construction, scope of operation or maintenance which has a significant effect on the potential for the discharge of pollutants to waters of the State, to include all land disturbance on the east side of the construction entrance. The erosion and sediment control plan does not include the area east of the entrance.

This was noted during the previous two inspections. This is a violation of its WV/NPDES permit Section G.4.c.

- b. Several sediment and erosion control devices were not in place as described in the approved SWPPP, including all the incorrect drop inlet protections. This is a violation of its WV/NPDES permit Section B.
- c. Several sediment and erosion control devices were not being properly operated and maintained, including the pipe slope drain, as well as all drop inlet protections that have been installed. This is a violation of its WV/NPDES permit Section D.1.
- d. The required inspection and maintenance records of all sediment and erosion controls are not being maintained on-site. This is a violation of its WV/NPDES permit Section G.4.e.2.C.vi.

Notices of Violation I11-40-003-JCC through I11-40-006-JCC were issued.

5. A meeting was held on June 23, 2011 between WVDEP and Putnam BOE's representative Williamson Skinner Architects, to discuss the terms of this Order. Putnam BOE's contractor, Eagle Contractor, was also in attendance at the meeting.

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. Putnam BOE shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within fifteen (15) days of entry of this Order, Putnam BOE shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Putnam BOE will achieve compliance with all terms and conditions of its WV/NPDES permit and/or pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
P.O. Box 662
Teays, WV 25569**

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. Because of Putnam BOE's permit violations, Putnam BOE shall be assessed a civil administrative penalty of sixteen thousand eight hundred thirty dollars (\$16,830) 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. Putnam BOE 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, Putnam BOE 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, Putnam BOE 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 Putnam BOE 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, Putnam BOE 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 Putnam BOE 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 Putnam BOE 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 Putnam BOE (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 Putnam BOE 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 Putnam BOE 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 Putnam BOE, its successors and assigns.
7. This Order shall terminate upon Putnam BOE's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


Harold Hatfield
Putnam County Board of Education

7-27-11
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date



- Small section of silt fence needs to be maintained, next to unpermitted waste area.



- Small section of silt fence needs to be maintained, next to unpermitted waste area.



- Silt fence at the top of the dump rock gutter needs to be removed, erosion repaired, and area stabilized.



- Silt fence at the top of the dump rock gutter needs to be removed, erosion repaired, and are stabilized.



- Erosion noted in the diversion leading to the drop inlet closest to the entrance. Drop inlet protection was removed and needs to be re-installed. Temporary ditch checks should be installed.



- Sediment build up in both traps should be cleaned out.



- Sediment build up in both traps should be cleaned out.



- Several areas throughout the site need to be re-seeded.



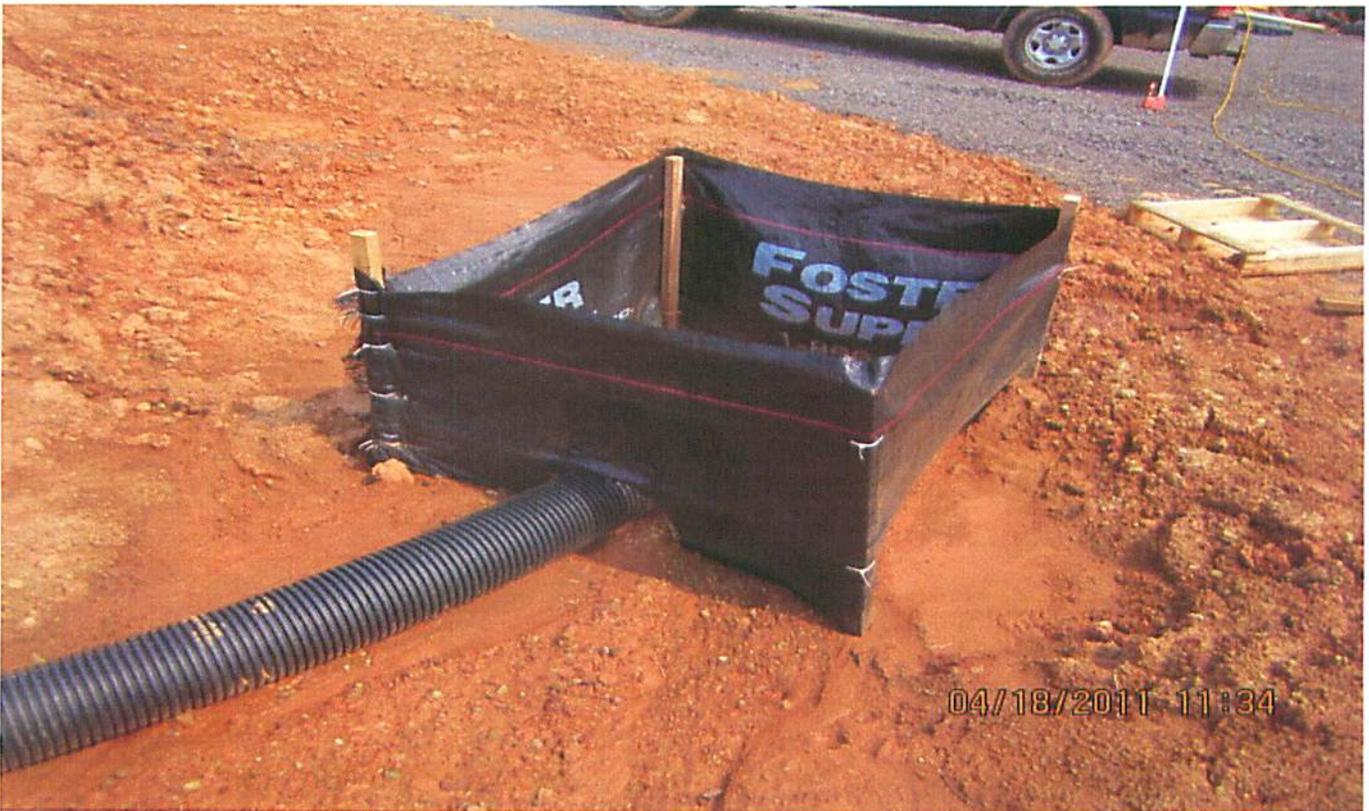
- Several areas throughout the site need to be re-seeded.



- Several areas throughout the site need to be re-seeded.



- Pipe slope drain not properly installed. A small sump should be excavated at the head of the pipe.



- The end of the pipe slope drain cannot be installed under the drop inlet protection.



- All drop inlet protections have not been properly installed or maintained. The approved detail in the SWPPP was not followed.



- All drop inlet protections have not been properly installed or maintained. The approved detail in the SWPPP was not followed.



- All drop inlet protections have not been properly installed or maintained. The approved detail in the SWPPP was not followed.



- Waste area is still not included in the permitted construction boundary.



- Waste area still not included in the permitted construction boundary.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Putnam County BOE Receiving Stream: Tributaries to Manila Creek and Heizer 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#												
			2c	2d	2e	2f	3b	3c	3d	4a	4b	4c	4d		
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1		
b)	Toxicity of Pollutant	0 to 3	1	1	0	0	1	1	1	1	1	1	0		
c)	Sensitivity of the Environment	0 to 3	1	1	0	0	1	1	1	1	1	1	0		
d)	Length of Time	1 to 3	1	1	1	1	2	1	1	3	1	1	1		
e)	Actual Exposure and Effects thereon	0 to 3	1	1	0	0	1	1	1	1	1	1	0		
Average Potential for Harm Factor			1	1	0.4	0.4	1.2	1	1	1.4	1	1	0.4	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	2	2	1	1	2	2	2	2	2	2	1		

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.

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
2c	Minor	Moderate	\$1,500	1	\$1,500
2d	Minor	Moderate	\$1,500	1	\$1,500
2e	Minor	Minor	\$400	1	\$400
2f	Minor	Minor	\$400	1	\$400
3b	Moderate	Moderate	\$3,200	1	\$3,200
3c	Minor	Moderate	\$1,500	1	\$1,500
3d	Minor	Moderate	\$1,500	1	\$1,500
4a	Moderate	Moderate	\$3,400	1	\$3,400
4b	Minor	Moderate	\$1,500	1	\$1,500
4c	Minor	Moderate	\$1,500	1	\$1,500
4d	Minor	Minor	\$400	1	\$400
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$16,800

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
Penalty Adjustments			\$30
Penalty =			\$16,830

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:	