west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
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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
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12

TO: Appalachian Timber Services, LLC
Attn: Roy Henderson
393 Edgar Given Pkway
Sutton, WV 26601

DATE: March 18, 2014

ORDER NO.: 7984

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., and Chapter 22, Article 12, Section 1 et seq. to Appalachian Timber Services, LLC (hereinafter "ATS").

FINDINGS OF FACT

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

1. ATS operates a wood treatment facility located in Sutton, Braxton County, West Virginia. ATS was issued WV/NPDES Water Pollution Control Permit No. WV0072249 on July 10, 2008, and the WV/NPDES permit was reissued on May 23, 2012.

2. On May 23, 2012, West Virginia Department of Environmental Protection (WVDEP) issued Order No. 7581 to ATS. The Order was issued in response to ATS' failure to revise and implement changes to its Storm Water Pollution Prevention Plan (SWPPP) following numerous exceedances of benchmark concentrations. The Order required the following compliance tasks:

    a. Within ninety (90) days of the effective date of the Order, ATS should have submitted to WVDEP a plan of corrective action which identified causes of

benchmark exceedances, previous actions taken to address the exceedances, and SWPPP revisions implemented to achieve benchmark values.

b. ATS should have submitted quarterly progress reports which identified SWPPP revisions until such time when ATS achieved compliance with benchmark values for all storm water outlets.

3. On September 5, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of ATS' WV/NPDES permit, WV Legislative Rules, and WV State Code were observed and documented:

   a. Section C.1. - The Permittee failed to follow good housekeeping practices by improperly storing both waste tires and drums. Drums labeled as hazardous and waste tires were found being stored uncovered outdoors on the ground. On September 13, 2013 WVDEP personnel received photo documentation from ATS showing that the violation had been properly remediated.
   b. Section C.14.d. - The Permittee failed to properly notify WVDEP and update its SWPPP following exceedances of benchmark concentrations. Since the May 23, 2012 re-issuance of the WV/NPDES permit, there had been forty-two (42) exceedances of benchmark concentrations from storm water outfalls 002 and 003 (Table One) with no notification given to WVDEP and no update of the SWPPP.
   c. Appendix A.II.1. - The Permittee failed to at all times properly operate and maintain all facilities and systems of treatment and control. Specifically, the Permittee failed to maintain its storm water berm and site grading, allowing storm water to exit the site from an unpermitted discharge point into Elk River.
   d. 47CSR58 Section 4.7.d - ATS failed to store drums containing materials that have the potential to contaminate groundwater so that spills and leaks were contained. Drums labeled hazardous waste were found being stored without secondary containment.
   e. 22-11-1 et seq. - ATS failed to comply with Order No. 7581. Specifically:
      i. ATS failed to submit a plan of corrective action which identified causes of exceedances of benchmark values set forth by the WV/NPDES permit.
      ii. ATS failed to submit quarterly progress reports to WVDEP.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. I13-04-09053-GCM, No. I13-04-09052-GCM and No. I13-04-09051-GCM were issued to ATS.

4. On September 5, 2013, WVDEP personnel conducted a review of facility records from the time period of May 2012 through August 2013. During this review, the following violations of the terms and conditions of ATS' WV/NPDES permit were observed:

   a. Section C.9.-The Permittee failed to properly submit the following Discharge Monitoring Reports to WVDEP within twenty (20) days after the end of the reporting period:
      i. Outlet 001 - The 2nd and 3rd quarters of 2012 were submitted late.
      ii. Outlet 002 - The 1st half of 2012, the 2nd and 3rd quarters of 2012, and the 2nd quarter of 2013 were not submitted.
      iii. Outlet 003 - The 1st and 3rd quarters of 2012 were not submitted. The 2nd quarter of 2012 and 1st quarter of 2013 were submitted late.

5. On January 14, 2014, WVDEP personnel and representatives of ATS 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., and Chapter 22, Article 12, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. ATS shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.

2. The aforementioned and numerous permit compliance deficiencies and benchmark exceedances indicate that discharge from ATS' permitted storm water outlets is causing an impact upon water quality. Therefore, in accordance with WV/NPDES Permit Section C.15, Appendix A.I.11-12, WV Legislative Rule 47CSR10 Section 3.4.a, and WV State Code 22-11-12, within twenty (20) days of the effective date of this Order, ATS shall submit an administratively complete application for modification of its WV/NPDES permit. To control ATS' discharges, the modification shall establish effluent limitations for all storm water outlets. Any questions regarding the WV/NPDES permit modification process shall be directed to WVDEP DWWM-Permitting Section at (304) 926-0495.

3. Within twenty (20) days of the effective date of this Order, ATS shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when ATS will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall include, but not be limited to, an identification of causes of benchmark exceedances and a description of interim treatment measures that will be implemented by ATS to achieve compliance with its permitted benchmark values for all storm water outlets. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0072249 and Order No. 7984. The plan of corrective action shall be submitted to:

WVDEP Environmental Inspector Supervisor
SE Regional Environmental Enforcement Office
254 Industrial Drive
Oak Hill, WV 25901

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 ATS' WV Legislative Rules, WV/NPDES permit, and WV State Code violations, ATS shall be assessed a civil administrative penalty of twenty-six thousand six hundred forty dollars ($26,640) 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 57th Street SE
Charleston, WV 25304

OTHER PROVISIONS

1. ATS hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21, and/or Chapter 22, Article 12, Section 11of the Code of West Virginia. Under this Order, ATS 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, ATS 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 ATS 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, ATS 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 ATS becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and ATS 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 ATS 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 ATS (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 ATS 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 ATS 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 ATS, its successors and assigns.

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

Roy Henderson
Appalachian Timber Services, LLC

3-21-14
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013

Photo Log
Appalachian Timber Services, LLC – Sutton, WV – September 05, 2013

Unpermitted storm water discharge from site – 09/05/2013

Unpermitted storm water discharge from site – 09/05/2013

Photo Log
Appalachian Timber Services, LLC – Sutton, WV – September 05, 2013

Improperly maintained sediment trap at 003 – 09/05/2013

003 discharge point – 09/05/2013

Photo Log
Appalachian Timber Services, LLC – Sutton, WV – September 05, 2013

Improper storage of drum – 09/05/2013

Improper storage of drum – 09/05/2013

Photo Log
Appalachian Timber Services, LLC – Sutton, WV – September 05, 2013

Improper storage of drums, no secondary containment – 09/05/2013

001 discharge, non-contact cooling water – 09/05/2013

Photo Log

Appalachian Timber Services, LLC – Sutton, WV – September 05, 2013

On-site fuel Storage – 09/05/2013

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Appalachian Timber Services, LLC **Receiving Stream:** Elk River

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

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

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

		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
3b	Minor	Major	$1,700	1	$1,700
3c	Minor	Minor	$1,000	1	$1,000
3ei	Minor	Major	$1,700	1	$1,700
3eii	Minor	Major	$1,700	1	$1,700
4ai	Minor	Major	$1,700	2	$3,400
4aii	Minor	Major	$1,700	4	$6,800
4aiii	Minor	Major	$1,700	4	$6,800
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					$23,100

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		$4,620
6.2.b.4 - Compliance/noncompliance history -			$0
6.2.b.6 - Economic benefits - (flat monetary increase)	$1,200		$1,200
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		10	($2,310)
6.2.b.5 - Ability to Pay			$0
Penalty Adjustments			**$3,540**
Penalty =			**$26,640**

Estimated Economic Benefit Item	Estimated Benefit ($)
Monitoring & Reporting	$1,200
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	**$1,200**

Comments: $1,200 = avoided cost of sampling/submitting 6 quarters of DMRs.