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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> 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**

TO: ~~Georgetta McKinley~~  
*KEVIN ADRIAN*  
Adrian Enterprises, LLC  
1109 Van Vorrhis Rd.  
Morgantown WV 26508

DATE: February 27, 2012

ORDER NO.: 7445

**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 Adrian Enterprises (hereinafter "Adrian Enterprises").

**FINDINGS OF FACT**

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

1. Adrian Enterprises operates a construction site with land disturbance located near Hornbeck Road, Monongalia County, West Virginia. Adrian Enterprises was issued WV/NPDES General Water Pollution Control Permit for Stormwater Associated with Construction Activities (WV0115924), General Permit Registration No. WVR102348, on June 28, 2006 with an expiration date of December 4, 2012. This permit is for 75 acres of disturbance.
2. On July 31, 2008 WVDEP personnel conducted an inspection of the Hornbeck Road construction site. During the inspection the following violation of WV Legislative Rule was observed and documented. Notice of Violation No. SW-NW-BML-073108-001 was issued.
  - a. Permittee caused conditions not allowable in state waters by creating a distinctly visible color within the receiving stream of the construction project. (47CSR2 Section 3.2.f.)

3. On December 4, 2008 WVDEP personnel conducted an inspection of the Hornbeck Road construction site. During the inspection the following violations of the terms and conditions of Adrian Enterprises' permit were observed and documented. Notice of Violation No. SW-NW-BML-120408-001 was issued.
  - a. Permittee failed to properly operate the sediment ponds to the designed volume of storage. (Section D.1.)
  - b. Permittee failed to properly maintain drop inlet protection on several drop inlets. (Section D.1.)
4. On November 30, 2010 WVDEP personnel conducted an inspection of the Hornbeck Road construction site. During the inspection the following violation of WV Legislative Rule was observed and documented. Notice of Violation No. SW-NW-BML-113010-001 was issued.
  - a. Permittee caused conditions not allowable in state waters by creating a distinctly visible color within the unnamed tributary of Bloody Run. (47CSR2 Section 3.2.f.)
5. On July 6, 2011 WVDEP personnel conducted an inspection of the Hornbeck Road construction site. During the inspection the following violations of WV Legislative Rule and the terms and conditions of Adrian Enterprises' permit were observed and documented. Notice of Violation Nos. I11-31-050-JHH and I11-31-051-JHH were issued.
  - a. Permittee failed to operate and maintain all erosion control devices i.e. sediment basins/sumps, ditch checks, silt fence, and drop inlet protection. (Section D.1.)
  - b. Permittee failed to stabilize all temporary diversions prior to becoming functional. (Section G.4.e.2.A.i.d)
  - c. Permittee failed to temporary seed and mulch all areas where construction activities have ceased for more than 7 days. (Section G.4.e.2.A.i.)
  - d. Permittee allowed sediment-laden water to leave the site without going through an appropriate device at the road to borrow area near the pond. (Section G.4.e.2.A.ii.j.)
  - e. Permittee caused conditions not allowable by creating distinctly visible settleable solids in the waters of the state. Specifically, a visible plume of sediment laden water flowed into a tributary of Bloody Run via Outfall No. 004. (47CSR2 Section 3.2.a.)
6. On November 14, 2011, WVDEP personnel received correspondence from Adrian Enterprises which discussed 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. Adrian Enterprises shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and all pertinent laws and rules.
2. Within twenty (20) days of entry of this Order, Adrian Enterprises shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Adrian Enterprises will achieve compliance with all terms and conditions of its WV/NPDES permit and all pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
NW Regional Environmental Enforcement 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 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 Adrian Enterprises' Legislative Rule and permit violations, Adrian Enterprises shall be assessed a civil administrative penalty of eleven thousand eight hundred thirty dollars (\$11,830) 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

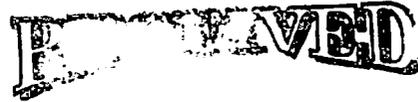
1. Adrian Enterprises hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Adrian Enterprises agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Adrian Enterprises 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 Adrian Enterprises 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, Adrian Enterprises 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 Adrian Enterprises 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 Adrian Enterprises 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 Adrian Enterprises (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 Adrian Enterprises 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 Adrian Enterprises 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 Adrian Enterprises, its successors and assigns.

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

  
\_\_\_\_\_  
Georgetta McKinley KEVIN ADRIAN  
Adrian Enterprises

4.13.12  
\_\_\_\_\_  
Date

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



APR 13 2012

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

ENVIRONMENTAL  
ENFORCEMENT

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

\_\_\_\_\_  
Date



REC. 2/29/2012

Jmz

west virginia department of environmental protection

Environmental Enforcement  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Telephone: (304) 926-0470 Fax: (304) 926-0488

Earl Ray Tomblin, Governor  
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February 27, 2012

~~Kevin Adams~~  
~~Georgetta McKinley~~  
Adrian Enterprises, LLC  
1109 Van Vorrhis Rd.  
Morgantown WV 26508

CERTIFIED RETURN RECEIPT REQUESTED

91 7199 9991 7030 8828 8543

RE: Violation of Chapter 22, Article 11  
of the WV State Code

Dear Ms. McKinley:

Enclosed is revised CONSENT ORDER NUMBER 7445 dated February 27, 2012. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to Adrian Enterprises, LLC violating Chapter 22, Article 11 of the WV State Code at its facility near Hornbeck Road, Monongalia County, West Virginia. This revision is based upon your recent submittal of information to David C. Simmons, Enforcement Hearing Officer. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,

Michael A. Zeto  
Chief Inspector

Enclosure

cc: Scott G. Mandirola, Director, DWWM (via e-mail)  
Yogesh Patel, Asst. Director, DWWM/Permits  
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)  
Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)  
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)  
Laura McGee, Environmental Resources Specialist, EE (via e-mail)  
Brad Swiger, Environmental Inspector Supervisor, EE/WW (via e-mail)  
John Hendley, Environmental Inspector, EE/WW (via e-mail)  
Shyrel Moellendick, MSSS, EE (via e-mail)

Promoting a healthy environment.

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Adrian Enterprises

Receiving Stream:

Bloody Run

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#													
			4a	5a	5b	5c	5d	5e								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1								
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1								
d)	Length of Time	1 to 3	1	1	1	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1								
	<b>Average Potential for Harm Factor</b>		1	1	1	1	1	1	No							
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	3	1	1	1	1	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  $\leq 40\%$  for Avg. Monthly or  $\leq 100\%$  for Daily Max., exceed numeric WQ standard by  $\leq 100\%$ , or report doesn't contain some minor information.

**Moderate** = exceedance of permit limit by  $\geq 41\%$  and  $\leq 300\%$  for Avg. Monthly,  $\geq 101\%$  and  $\leq 600\%$  for Daily Max., exceed numeric WQ standard by  $\geq 101\%$  and  $\leq$  of 600% or report doesn't fully address intended subject matter.

**Major** = exceedance of permit limit by  $\geq 301\%$  for Avg. Monthly,  $\geq 601\%$  for Daily Max., exceed numeric WQ standard by  $\geq 601\%$ , 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
4a	Minor	Major	\$2,000	1	\$2,000
5a	Minor	Minor	\$1,000	1	\$1,000
5b	Minor	Minor	\$1,000	1	\$1,000
5c	Minor	Minor	\$1,000	1	\$1,000
5d	Minor	Minor	\$1,000	1	\$1,000
5e	Minor	Major	\$2,000	1	\$2,000
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
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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
<b>Total Base Penalty</b>					<b>\$8,000</b>

## 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		\$800
6.2.b.4 - Compliance/noncompliance history	20		\$1,600
6.2.b.6 - Economic benefits - (flat monetary increase)	\$3,000		\$3,000
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	(\$800)
6.2.b.3 - Cooperation with the Secretary		10	(\$800)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$3,830</b>
<b>Penalty =</b>			<b>\$11,830</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	\$3,000
Permit Application or Modification	
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$3,000</b>
<b>Comments:</b>	