



west virginia department of environmental protection

Division of Water and Waste Management
601 57th 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: Breakaway, Inc.
Mr. Doug Vincent, Owner
1539 Old Turnpike Road
Sutton, WV 26601

DATE: November 20, 2014

ORDER NO.: 8178

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 Breakaway, Inc. (hereinafter "Breakaway").

FINDINGS OF FACT

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

1. Breakaway is conducting land disturbance activity near Bretz, Preston County, West Virginia.
2. On July 16, 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 were observed and documented:
 - a. 47CSR2 Sections 3.2 a and b - Breakaway caused conditions not allowable in waters of the State. Specifically, suspended solids and sediment deposits were observed in Deckers Creek.
 - b. 47CSR11 Section 2.2.a - Breakaway failed to immediately report a discharge of sediment to Deckers Creek.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W-14-39-19-202 and W-14-39-20-202 were issued to Breakaway.

Promoting a healthy environment.

3. On July 31, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:
 - a. 47CSR2 Sections 3.2 a and b - Breakaway caused conditons not allowable in waters of the State. Specifically, suspended solids and sediment deposits were observed in Deckers Creek.

As a result of the aforementioned violation, NOV No. W-14-39-24-202 was issued to Breakaway.

4. On August 27, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel observed and documented that Breakaway failed to meet the terms of the plan of corrective action that was submitted on July 21, 2014 in response to the aforementioned NOVs issued on July 16, 2014. The plan stated that corrections would be completed by July 22, 2014. Proposed corrections included additional sediment traps, additional rock check dams, clean-up of the road and outer berm, and building of additional channels for water leaving the jobsite. WVDEP personnel observed and documented that the proposed corrections were either incomplete or non-existent.
5. On September 4, 2014, WVDEP issued Order No. 8150 to Breakaway in response to the aforementioned violations. The Order required that Breakaway immediately cease and desist further land development activity until WVDEP personnel determined that appropriate erosion/sediment control devices were in place in accordance with Breakaway's Storm Water Pollution Prevention Plan (SWPPP). In addition, the Order required that Breakaway submit a plan of corrective action and schedule, outlining action items and completion dates for how and when Breakaway would achieve compliance with all pertinent laws and rules.
6. On September 26, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel observed that matting was not secured properly, drop inlets were not protected, and straw wattles were not trenched in. In addition, a violation of the following section of WV Legislative Rules was documented:
 - a. 47CSR2 Section 3.2.b – Breakaway caused conditions not allowable by creating deposits in waters of the State. Specifically, Breakaway discharged green cement from a grouted ditch into Deckers Creek.

As a result of the aforementioned violation, NOV No. W-14-39-37-202 was issued to Breakaway.

7. On October 27, 2014, WVDEP personnel and a representative of Breakaway 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. Breakaway shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of Breakaway's Legislative Rule violations, Breakaway shall be assessed a civil administrative penalty of eight thousand eight hundred thirty dollars (\$8,830). Five thousand eight hundred thirty dollars (\$5,830) of the civil administrative penalty shall be held in abeyance for a period of one (1) year after the effective date of this Order. The remaining three thousand dollars (\$3,000) of the civil administrative penalty shall be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

Payment 1 in the amount of \$1,000 due on or before January 1, 2015.

Payment 2 in the amount of \$1,000 due on or before February 1, 2015.

Payment 3 in the amount of \$1,000 due on or before March 1, 2015.

Breakaway agrees to pay the five thousand eight hundred thirty dollars (\$5,830) held in abeyance within thirty (30) days of notice from WVDEP that any additional construction activities conducted by Breakaway have caused conditions not allowable in waters of the State, as described in WV Legislative Rule 47CSR2 Section 3.2.

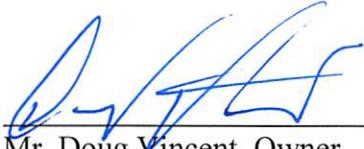
Payments made pursuant to this paragraph are not tax-deductible for purposes of state or federal law. **Payment shall be mailed to:**

**Chief Inspector
Environmental Enforcement – Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Breakaway 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, Breakaway 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, Breakaway 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 Breakaway 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, Breakaway 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 Breakaway becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Breakaway 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 Breakaway 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 Breakaway (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 Breakaway 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 Breakaway 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 Breakaway, its successors and assigns.

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



Mr. Doug Vincent, Owner
Breakaway, Inc.

11/26/14
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013



DEC 05 2014

ENVIRONMENTAL
ENFORCEMENT



Sediment plume and sediment bed in Deckers Creek



Sediment leaving the roadway



Sediment leaving the roadway



Un-stabilized ditch conveying sediment laden water to Deckers Creek



Road with no erosion and sediment controls, sediment discharging to Deckers Creek

Bretz (Methany) Mine Drainage
Breakaway, Inc
July 31, 2014



Unstabilized ditch entering Deckers Creek and sediment bed in Deckers Creek



Sediment leaving the road toward Deckers Creek

Bretz (Methany) Mine Drainage
Breakaway, Inc
July 31, 2014



Sediment leaving the road toward Deckers Creek



Sediment leaving the road and water flowing around the "plug" placed to prevent discharge

Bretz (Methany) Mine Drainage
Breakaway, Inc
July 31, 2014



Unstabilized ditches along the road



Sediment leaving the road toward Deckers Creek

Bretz (Methany) Mine Drainage
Breakaway, Inc
July 31, 2014



Unstabilized area on the upper side of the road

Bretz (Methany) Mine Drainage
Near Masontown, Preston County
August 27, 2014



Fill area near entrance. Erosion gullies. No silt fence. No straw wattles.

Bretz (Methany) Mine Drainage
Near Masontown, Preston County
August 27, 2014



Near residence at site entrance. Loose rock and dirt pushed up to form "berm." No compaction. Improperly constructed.

Bretz (Methany) Mine Drainage
Near Masontown, Preston County
August 27, 2014



Toward end of site. Gullies in road and to right. No ditch on left, contrary to the plan.

Bretz (Methany) Mine Drainage
Near Masontown, Preston County
August 27, 2014



Culvert from sump/active drain into Deckers Creek. More erosion since last site visit. Unstabilized bank. Unstabilized channel.

Bretz (Methany) Mine Drainage
Near Masontown, Preston County
August 27, 2014



Silt fence located above culvert area. Sediment bed entering Deckers Creek.

Bretz (Methany) Mine Drainage
Near Masontown, Preston County
August 27, 2014



Toward end of site. No silt fence. No straw wattles. No ditch.

Bretz (Methany) Mine Drainage
Near Masontown, Preston County
August 27, 2014



Erosion gully behind loose dirt berm.



Unprotected drop inlet



Straw wattle not trenched in



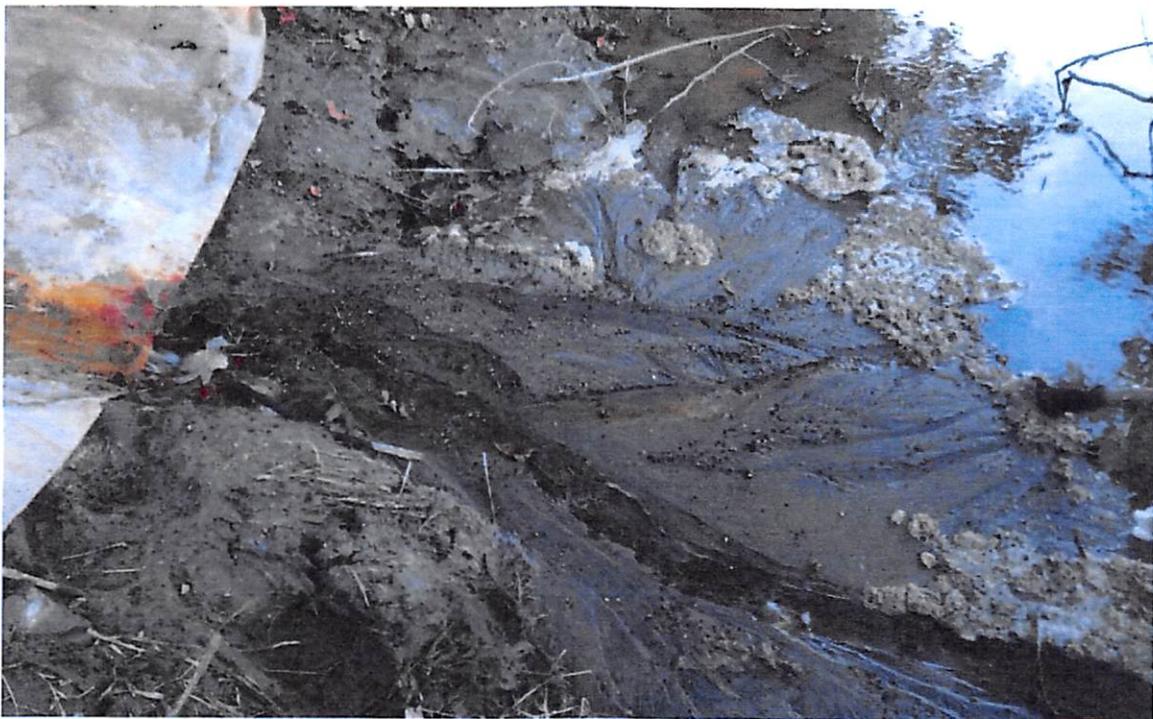
Matting not secured properly



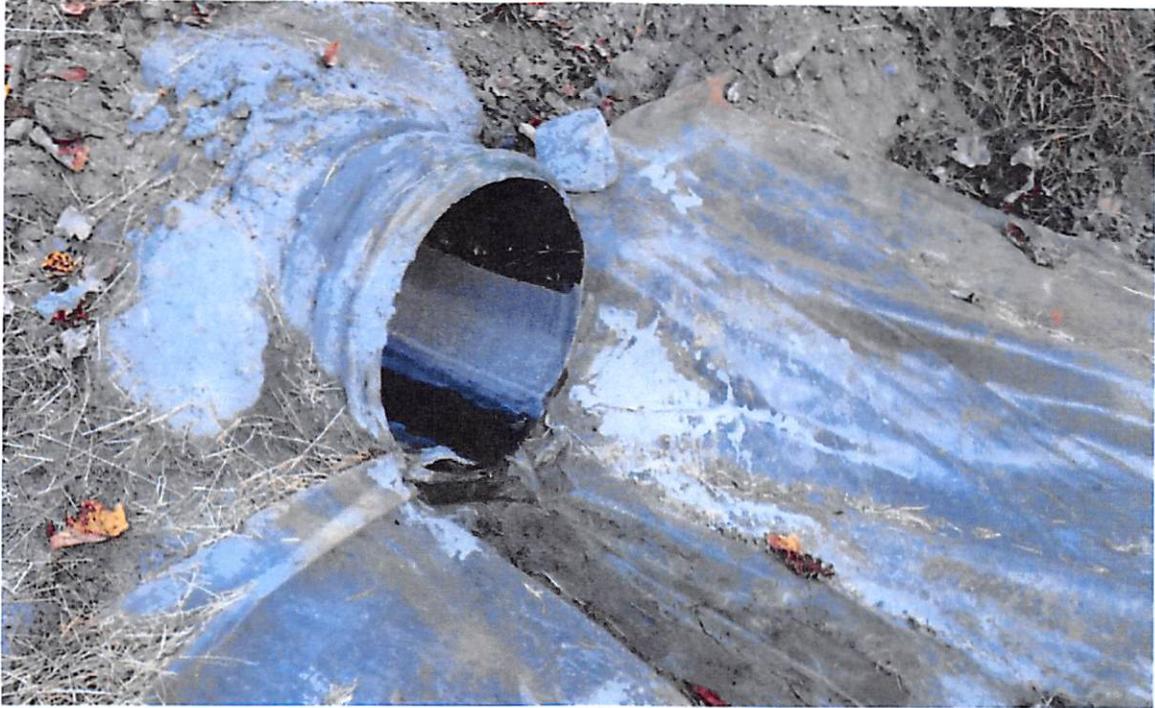
Matting not secured properly



Grouted ditch where the cement made it to the stream



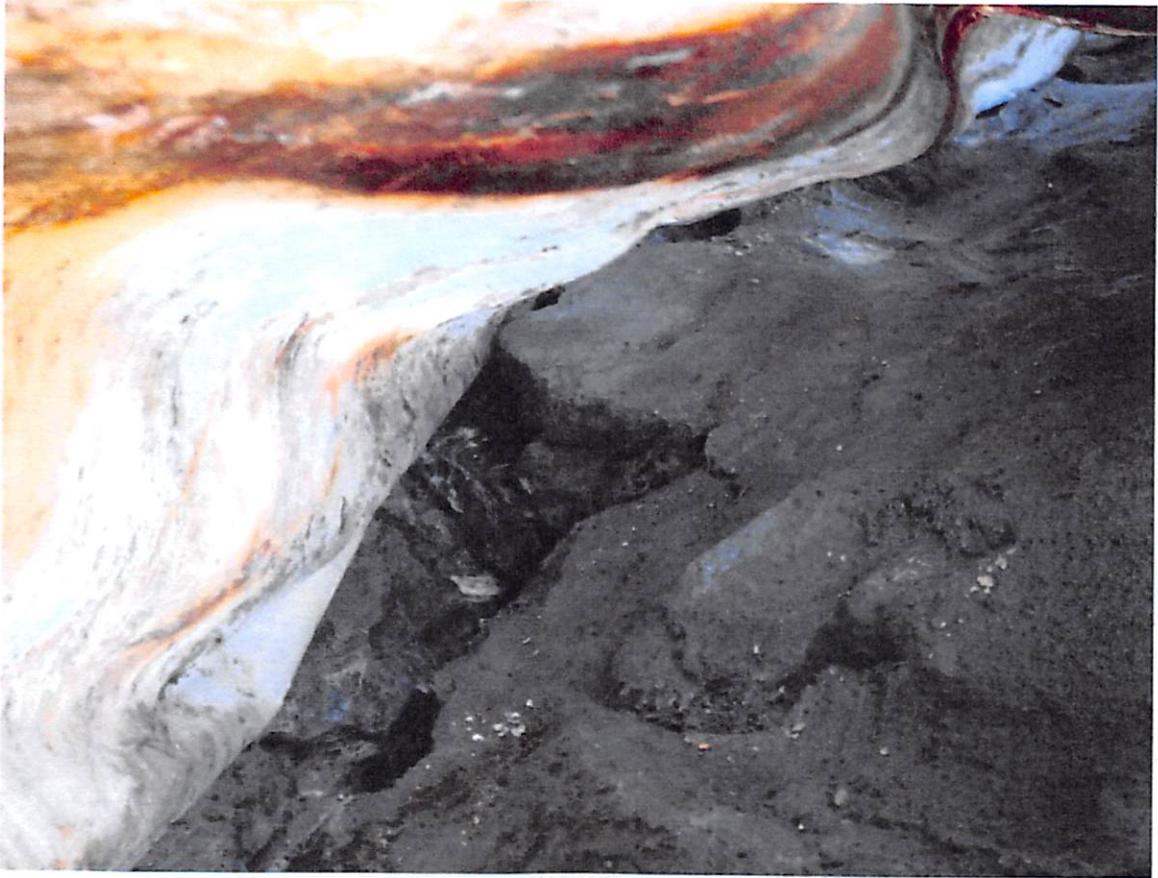
Cement in the creek bed



Cement line in the culvert



Erosion rills in fresh cement



Erosion rills in fresh cement under the plastic

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Breakaway Inc Receiving Stream: Deckers Creek

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#												
			2a	2b	3a	6a									
a)	Amount of Pollutant Released	1 to 3	1	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	1	1	1									
c)	Sensitivity of the Environment	0 to 3	1	1	1	1									
d)	Length of Time	1 to 3	1	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1									
Average Potential for Harm Factor			1	1	1	1	No								
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 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 -	10		\$800
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			\$830
Penalty =			\$8,830

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:	