



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**

TO: Burdette Realty Improvement Company, Inc.
Jon Burdette, President/CEO
PO Box 7479
Charleston, WV 25356

DATE: June 17, 2013

ORDER NO.: 7854

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 Burdette Realty Improvement Company, Inc. (hereinafter "Burdette Realty Improvement Co.").

FINDINGS OF FACT

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

1. Burdette Realty Improvement Co. is conducting land disturbance activity near Cross Lanes, Kanawha County, West Virginia. Burdette Realty Improvement Co. was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR105965, on June 13, 2012.
2. On October 22, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Burdette Realty Improvement Co.'s WV/NPDES permit were observed and documented:
 - a. Section D.1-The Permittee failed to operate and maintain all erosion and sediment controls. Specifically, silt fence was down in an area of the outlet.
 - b. Section G.4.e.2.A.i-The Permittee failed to temporary seed and mulch areas where construction activities had ceased for more than seven (7) days.

Promoting a healthy environment.



NOTICE OF THE BOARD OF DIRECTORS

Dear Shareholders:

The Board of Directors has met and has adopted the following resolutions:

1. To approve the annual report of the company for the year ended 31st March 2014.

2. To approve the dividend of 10% on the equity shares of the company for the year ended 31st March 2014.

Yours faithfully,
Chairman

Secretary

ANNOUNCEMENT

The Board of Directors has met and has adopted the following resolutions:

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- c. Section G.4.e.2.D-The Permittee failed to inspect all erosion control devices at least once every seven (7) calendar days and within twenty-four (24) hours after any storm event of greater than 0.5 inches of rain per twenty-four (24) hour period.
- d. Section G.4.e.2.C.vi-The Permittee failed to retain erosion and sediment control inspection records on site for review.

As a result of the aforementioned violations, Notices of Violation (NOV) Nos. I12-20-257-GSR through I12-20-260-GSR were issued to Burdette Realty Improvement Co.

3. On March 25, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Burdette Realty Improvement Co.'s WV/NPDES permit were observed and documented:
 - a. Section D.1-The Permittee failed to operate and maintain all erosion and sediment controls. Specifically, silt fence was down and placed in concentrated flow areas.
 - b. Section G.4.e.2.A.i-The Permittee failed to temporary seed and mulch areas left bare for more than seven (7) days.
 - c. Section B-The Permittee failed to comply with its approved Storm Water Pollution Prevention Plan by not installing four (4) inlets to the sediment basin.
 - d. Section C.15-The Permittee failed to post a proper outlet marker at all permitted outlets from the site, and two inlets were routed off-site without proper Best Management Practices (BMPs) installed.
 - e. 47CSR2 Section 3.2.a-The Permittee caused conditions not allowable in waters of the State by creating distinctly visible settleable solids in the stream. The sediment laden water should have been routed through the sediment basin, but instead was diverted to the state highway ditch and flowed over one hundred (100) yards to reach an unnamed tributary of Howard Creek.
 - f. Section G.4.e.2.A.ii.c-The Permittee failed to provide inlet protection for erosion control structures at the inlet to the basin.

As a result of the aforementioned violations, NOV Nos. I13-20-87-GSR through I13-20-92-GSR were issued to Burdette Realty Improvement Co.

4. On June 5, 2013, WVDEP personnel and representatives of Burdette Realty Improvement Co. 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. Burdette Realty Improvement Co. 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 Burdette Realty Improvement Co.'s Legislative Rule and permit violations, Burdette Realty Improvement Co. shall be assessed a civil administrative penalty of ten thousand three hundred eighty dollars (\$10,380) 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. 7854 and shall be mailed to:**

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

OTHER PROVISIONS

1. Burdette Realty Improvement Co. 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, Burdette Realty Improvement Co. 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, Burdette Realty Improvement Co. 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 Burdette Realty Improvement Co. 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, Burdette Realty Improvement Co. 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 Burdette Realty Improvement Co. becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Burdette Realty Improvement Co. 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 Burdette Realty Improvement Co. 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 Burdette Realty Improvement Co. (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 Burdette Realty Improvement Co. 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 Burdette Realty Improvement Co. 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 Burdette Realty Improvement Co., its successors and assigns.
7. This Order shall terminate upon Burdette Realty Improvement Co.'s notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

RECEIVED

JUN 28 2013

ENVIRONMENTAL
ENFORCEMENT



Jon Burdette, President/CEO
Burdette Realty Improvement Company, Inc.

6/26/13
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date



Outlet from site to DOH culvert needs protection replaced



Outlet from sediment basin lacks stabilization



Area of fill on sediment basin needs seed and mulch



Silt fence is not properly trenched



A riprap diversion leading to the basin should have been installed as per plans



A proper outlet marker needs to be installed in accordance with 47CSR11.19



Diversion along the access road is sending all water to DOH ditch, e & s plans show two type G inlet with outlet protection going from diversion along access road to the sediment basin



Sediment laden water is leaving the site without going through an approved BMP



Sediments in DOH ditch below the site



Sediment laden water from the site in DOH ditch mixing with water from ephemeral stream



Ephemeral stream that flows to merge with DOH ditch



Sediment laden water in DOH ditch 100 yards below site



Inlet protection around 52 inch DOH inlet



Water entering 52 inch DOH inlet, clear water center top is from clean water diversion,
water at left is from basin, water at right is from access road diversion



Silt fence installed in concentrated flow



Silt fence installed in clean water diversion



Riser structure is not functioning properly to provide required wet storage



View of sediment basin from above



View of sediment basin from the dam



View of access road from bottom



Ditch checks need cleaned, there should be two type G inlets with stabilized outlet leading to the basin installed from this diversion



Area left without stabilization for greater than 7 days



Diversion leading to sediment basin needs additional stabilization

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Burdette Realty Improvement Company, Inc. Receiving Stream: Howard Fork

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	2c	3a	3b	3c	3d	3e	3f				
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	2	1	2	1				
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	0	1	1				
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1	0	1	1				
d)	Length of Time	1 to 3	1	1	1	2	2	1	1	1	1				
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0	0	0	0	0	1	1				
Average Potential for Harm Factor			0.8	0.8	0.8	1	1	1	0.4	1.2	1	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	1	1	1	1	1	2	1	3	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
2a	Minor	Minor	\$800	1	\$800
2b	Minor	Minor	\$800	1	\$800
2c	Minor	Minor	\$800	1	\$800
3a	Minor	Minor	\$1,000	1	\$1,000
3b	Minor	Minor	\$1,000	1	\$1,000
3c	Minor	Moderate	\$1,500	1	\$1,500
3d	Minor	Minor	\$400	1	\$400
3e	Moderate	Major	\$4,200	1	\$4,200
3f	Minor	Minor	\$1,000	1	\$1,000
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
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					\$11,500

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		\$1,150
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		10	(\$1,150)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,150)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$1,120)
Penalty =			\$10,380

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:	