



west virginia department of environmental protection

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

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

June 14, 2013

City of Mount Hope
Attn: Michael Martin
PO Box 151
Mount Hope WV, 25880

CERTIFIED RETURN RECEIPT REQUESTED

91 7199 9991 7032 6245 5594

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

Dear Mayor Martin:

Enclosed is revised CONSENT ORDER NUMBER 7827 dated June 14, 2013. 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 City of Mount Hope violating Chapter 22, Article 11 of the WV State Code at its facility located near Mount Hope, Fayette County, West Virginia. This revision is based upon your recent meeting with 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 (via e-mail)
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)
Kevin Lilly, Environmental Inspector Supervisor, EE/WW (via e-mail)
John Hendley, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)

revised October 2012

Promoting a healthy environment.



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

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: City of Mount Hope
Attn: Michael Martin
PO Box 151
Mount Hope WV, 25880

DATE: June 14, 2013

ORDER NO.: 7827

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 City of Mount Hope (hereinafter "Mount Hope").

FINDINGS OF FACT

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

1. Mount Hope operates a water line construction project located near Mount Hope, Fayette County, West Virginia. Mount Hope was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR105878, on January 13, 2012.
2. On January 14, 2013, 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 and Mount Hope's WV/NPDES permit were observed and documented:
 - a. Section G.4.e.2. - failed to properly implement controls: improperly installed silt fence above (east side) stream crossing.
 - b. Section G.4.e.2.A.ii.j. - failed to prevent sediment-laden water from leaving the site without going through an appropriate device.

- c. 47CSR2-3.2.b. - caused conditions not allowable in waters of the State by allowing sediment deposits on the bottom of the unnamed tributary of Dunloup Creek.

As a result of the aforementioned violations, Notice of Violation (NOV) No. I13-10-007-JHH was issued to Mount Hope.

3. On February 13, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Mount Hope's WV/NPDES permit were observed and documented:
 - a. Section G.4.e.2. - failed to properly implement controls: improperly installed silt fence at stream crossing #1 and no diversions near booster station or Forest Hill Rd. culvert.
 - b. Section G.4.e.2.A.ii.j. - failed to prevent sediment-laden water from leaving the site without going through an appropriate device at north end/log road area, Turkey Knob spoil pile, near booster station, and Forest Hill Rd. culvert.
 - c. Section D.1.- failed to operate and maintain silt fence at stream crossing #1 (Mill Creek).
 - d. Section G.4.e.2.A.i.d.- failed to stabilize all diversions prior to becoming functional at north end/log road area.
 - e. Section G.4.e.2.A.i.- failed to initiate stabilization measures on all areas where construction activities had permanently ceased for more than 7 days at north end/log road area.
 - f. 47CSR2-3.2.b. - caused conditions not allowable in waters of the State by allowing sediment deposits on the bottom of the unnamed tributaries of Dunloup Creek at north end of project and near booster station.

As a result of the aforementioned violations, Notice of Violation (NOV) No. I13-10-011-JHH was issued to Mount Hope.

4. On May 15, 2013, WVDEP personnel and representatives of Mount Hope 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. Mount Hope shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, Mount Hope shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Mount Hope will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0115924,

Registration No. WVR105878, and Order No. 7827. 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.

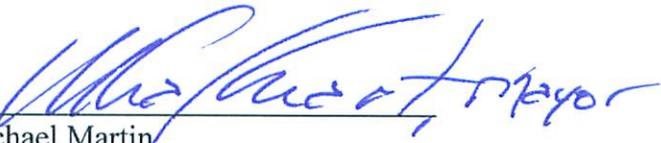
3. Because of Mount Hope's Legislative Rule and permit violations, Mount Hope shall be assessed a civil administrative penalty of thirteen thousand thirty dollars (\$13,030) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within 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. Mount Hope 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, Mount Hope 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, Mount Hope 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 Mount Hope 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, Mount Hope 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 Mount Hope becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Mount Hope 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 Mount Hope 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 Mount Hope (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 Mount Hope 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 Mount Hope 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 Mount Hope, its successors and assigns.

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



Michael Martin
City of Mount Hope

Date July 25, 2013

Public Notice begin:



Date

JUL 26 2013

Public Notice end:

ENVIRONMENTAL
ENFORCEMENT

Date

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

Date



Silt fence improperly installed above (east side) stream crossing.



Stream crossing between Rt. 61 and Gaines Ave.
No stream protection or stabilization measures in place.



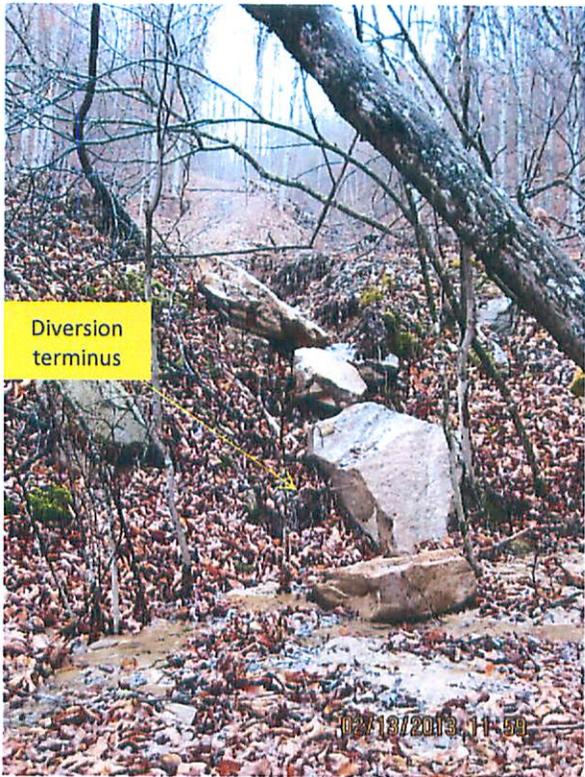
Fill pushed into receiving stream. Sediment deposits in unnamed tributary of Dunloup Creek.



Sediment deposits noted in both of the receiving streams at this location.



Large sediment deposits were noted in receiving stream.



No controls in place here and diversion has not been stabilized. Large sediment deposits were noted in receiving stream.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

City of Mount Hope

Receiving Stream:

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

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 |
|---------------------------|--------------------|---------------------|---------|-----------------|-----------------|
| 2.a. | Minor | Minor | \$1,000 | 1 | \$1,000 |
| 2.b. | Minor | Moderate | \$1,500 | 1 | \$1,500 |
| 2.c. | Minor | Moderate | \$1,500 | 1 | \$1,500 |
| 3.a. | Minor | Moderate | \$1,500 | 1 | \$1,500 |
| 3.b. | Minor | Moderate | \$1,500 | 1 | \$1,500 |
| 3.c. | Minor | Moderate | \$1,500 | 1 | \$1,500 |
| 3.d. | Minor | Moderate | \$1,500 | 1 | \$1,500 |
| 3.e. | Minor | Moderate | \$1,500 | 1 | \$1,500 |
| 3.f. | Minor | Moderate | \$1,500 | 1 | \$1,500 |
| 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 | | | | | \$13,000 |

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 | | \$1,300 |
| 6.2.b.4 - Compliance/noncompliance history | 10 | | \$1,300 |
| 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 | (\$1,300) |
| 6.2.b.3 - Cooperation with the Secretary | | 10 | (\$1,300) |
| 6.2.b.5 - Ability to Pay | | | \$0 |
| Penalty Adjustments | | | \$30 |
| Penalty = | | | \$13,030 |

| 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: | |