



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

April 6, 2012

Crab Orchard/McArthur PSD
Barry Milam, General Manager
PO Drawer 278
Crab Orchard, WV 25827

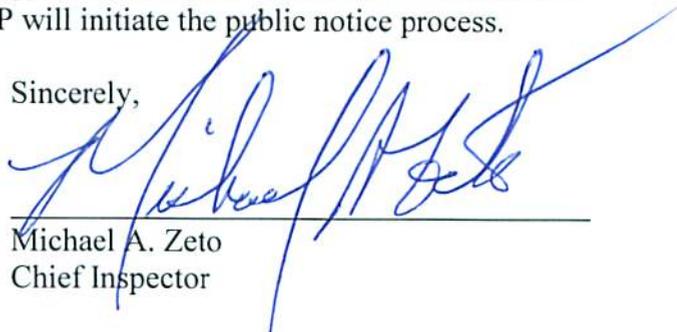
CERTIFIED RETURN RECEIPT REQUESTED
91 7199 9991 7030 8528 3008
RE: Violation of Chapter 22, Article 11
of the WV State Code

Dear Mr. Milam:

Enclosed is revised CONSENT ORDER NUMBER 7540 dated April 6, 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 Crab Orchard/McArthur PSD violating Chapter 22, Article 11 of the WV State Code at its facility located north of Crab Orchard, Raleigh 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
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, Acting 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 September 2011

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: Crab Orchard/McArthur PSD
PO Drawer 278
Crab Orchard, WV 25827

DATE: April 6, 2012
ORDER NO.: 7540

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 Crab Orchard/McArthur PSD (hereinafter "Crab Orchard PSD").

FINDINGS OF FACT

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

1. Crab Orchard PSD operates a construction project located north of Crab Orchard, Raleigh County, West Virginia. Crab Orchard PSD was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR104542, on July 30, 2009.
2. On November 21, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, the following violations of WV Legislative Rule and the terms and conditions of Crab Orchard PSD's WV/NPDES Permit were observed and documented:
 - a. Permittee failed to comply with the General Permit and approved Storm Water Pollution Prevention Plan (SWPPP). No erosion control devices were in place, and stabilization practices were not being implemented, as detailed by the SWPPP (Section B.).
 - b. Permittee failed to properly implement controls (Section G.4.e.2.).

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- c. Permittee failed to initiate stabilization measures on all areas where construction activities have permanently ceased for more than seven (7) days (Section G.4.e.2.A.i.).
- d. Permittee failed to seed and stabilize all temporary diversions immediately and prior to becoming functional (Section G.4.e.2.A.i.d).
- e. Permittee failed to prevent sediment-laden water from leaving the site without going through an appropriate device (Section G.4.e.2.Aii.j.).
- f. Permittee caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the stream in several tributaries of Stover Fork of Crab Orchard Creek (47CSR2 Section 3.2.b.).

Notice of Violations (NOV) Nos. I11-41-076-JHH and 11-41-077-JHH were issued to Crab Orchard PSD for the aforementioned violations.

3. On March 8, 2012, WVDEP and Crab Orchard PSD met to discuss the terms 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. Crab Orchard PSD 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 entry of this Order, Crab Orchard PSD shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Crab Orchard PSD will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. 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 Crab Orchard PSD's Legislative Rule and permit violations, Crab Orchard PSD shall be assessed a civil administrative penalty of eight thousand one hundred thirty dollars (\$8,130) 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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Crab Orchard PSD 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, Crab Orchard PSD 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, Crab Orchard PSD 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 Crab Orchard PSD 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, Crab Orchard PSD 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 Crab Orchard PSD 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 Crab Orchard PSD 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 Crab Orchard PSD (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 Crab Orchard PSD 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 Crab Orchard PSD 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 Crab Orchard PSD, its successors and assigns.
7. This Order shall terminate upon Crab Orchard PSD's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Barry Milam
Barry Milam, General Manager
Crab Orchard PSD

4/10/12
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date



Diversion/permanent waterway not stabilized at Klein Property (line 31).





Diversion/permanent waterway not stabilized at Cale Property (line 31).





Sediment deposits in receiving stream of line 31 land disturbance (unnamed tributary of Stover Fork).





No stabilization measures for diversion and area at final grade at vicinity of Red Gate Road/Lonnie's Lane.



Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Crab Orchard/McArthur PSD

Receiving Stream:

Stover 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	2d	2e	2f								
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								
Average Potential for Harm Factor			1	1	1	1	1	1	No							
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	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.

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		\$900
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	(\$900)
6.2.b.3 - Cooperation with the Secretary		10	(\$900)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$870)
Penalty =			\$8,130

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:	



DUNN ENGINEERS, INC.

April 11, 2012

RECEIVED HAND CARRY

APR 11 2012

Mr. Mike Zeto, Chief Inspector
West Virginia Department of Environmental Protection
601 - 57th Street, S.E.
Charleston, WV 25304-2345

ENVIRONMENTAL
ENFORCEMENT

**RE: Crab Orchard-MacArthur PSD
Consent Order No. 7540**

Dear Mr. Zeto:

Enclosed is Consent Order No. 7540, which was signed by the Crab Orchard-MacArthur Public Service District yesterday, April 10, 2012.

Should you have any questions, please call or email us.

Sincerely,

DUNN ENGINEERS, INC.

Frederick L. Hypes, P.E., P.S.
Vice President of Engineering

FLH:sz

c: Barry Milam, COMA PSD (*via e-mail only, w/o enclosure*)