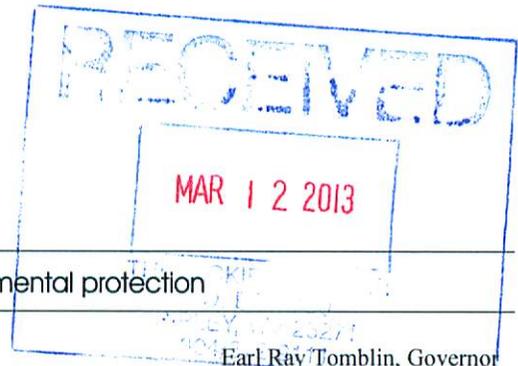


RECEIVED

MAR 14 2013



ENVIRONMENTAL
ENFORCEMENT

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

March 11, 2013

Dickirson Corp.
Ms. Ashley Hosaflook, Production Assistant
PO Box 750
Ripley, WV 25271

CERTIFIED RETURN RECEIPT REQUESTED
91 7199 9991 7032 6243 2472
RE: Violation of Chapter 22, Article 11
of the WV State Code

Dear Ms. Hosaflook:

Enclosed is 2nd revised CONSENT ORDER NUMBER 7774 dated March 11, 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 Dickirson Corp. violating Chapter 22, Article 11 of the WV State Code at its facility located in Fairplain, Jackson County, West Virginia. This revision is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer and your subsequent submittal of documents to WVDEP personnel. 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)
Cynthia Musser, Environmental Inspector Supervisor, EE/WW (via e-mail)
Marlan Zvoll, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)
M. Ann Bradley, Spilman Law Office (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: Dickirson Corp.
Ms. Ashley Hosaflook, Production Assistant
PO Box 750
Ripley, WV 25271

DATE: March 11, 2013

ORDER NO.: 7774

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 Dickirson Corp. (hereinafter "Dickirson").

FINDINGS OF FACT

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

1. Dickirson operates an industrial facility that discharges treated industrial waste water and storm water located in Fairplain, Jackson County, West Virginia. Dickirson was issued WV/NPDES Water Pollution Control Permit No. WV0116092 on January 21, 2009.
2. On August 23, 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 Dickirson's WV/NPDES permit were observed and documented:
 - a. Section A.001-Dickirson failed to sample all outlets at the required frequency and failed to meet discharge limits for Outlet 101.
 - b. Section C-Dickirson failed to collect samples at Outlet 002 within thirty (30) minutes of a storm event greater than 0.1 inch in magnitude that occurred at least seventy-two (72) hours after the previous 0.1 inch rain event.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W12-18-056-MAZ and W12-18-058-MAZ were issued to Dickirson.

3. On December 4, 2012, WVDEP personnel conducted a review of facility records from the time period of October 2010 through October 2012. During this review, the following violations of the terms and conditions of Dickirson's WV/NPDES permit were observed:
 - a. Section A-Ten (10) exceedances of Dickirson's permit parameters (Table 1) were observed. These exceedances can be further defined as:
 - i. Minor violations-Four (4) exceedances
 - ii. Moderate violations-Six (6) exceedances
 - b. Section C.19-Among the excursions, pH limits were not met on four (4) occasions at Outlet 101. Dickirson utilized an acidic cleaning agent, which reduced the pH of the discharge from the oil water separator at Outlet 101.
 - c. Section C.06-DMRs were not submitted at the required frequency for each outfall.
 - i. Outlet 001 - Sixteen (16) sample periods were not reported.
 - ii. Outlet 002 - Three (3) samples periods were not reported.
 - iii. Outlet 101 - Eighteen (18) samples periods were not reported.
4. On January 28, 2013, WVDEP personnel informed a representative of Dickirson that its WV/NPDES permit will expire on June 30, 2013. In addition, Dickirson was informed that it had violated the terms and conditions of its WV/NPDES permit by failing to electronically submit the WV/NPDES permit reissuance application by January 1, 2013.
5. On January 29, 2013, WVDEP personnel and a representative of Dickirson met to discuss the terms and conditions of this Order. Subsequent to the meeting, Dickirson provided correspondence to WVDEP personnel that included further explanation of circumstances surrounding the eighteen (18) unreported sample periods documented by WVDEP personnel on December 4, 2012. Dickirson's correspondence contained the following representations:
 - a. Six (6) reporting periods were "no flow" months, and Dickirson was not aware that DMR submittal was required when no samples were taken.
 - b. Five (5) reporting periods were not sampled, because it was Dickirson's understanding that sampling could only take place after seventy-two (72) hours of dry weather and within the first thirty (30) minutes of a rain event. Dickirson was, therefore, unable to collect samples and submits DMRs for these reporting periods. On January 28, 2013, WVDEP personnel advised Dickirson that the aforementioned sampling restrictions apply only to Outlet 002, while Outlets 001 and 101 are excluded from the restrictions.
 - c. Laboratory analyses for two (2) reporting periods were missing, but have since been obtained.
 - d. Submittal of four (4) reporting periods was overlooked by Dickirson.
 - e. Fourteen (14) of the aforementioned DMRs were submitted on January 28, 2013. Upon a record review, WVDEP personnel determined that, after the supplementary submittal, four (4) DMRs had yet to be received.

6. On February 5, 2013, Dickirson submitted to WVDEP personnel an application for reissuance of its WV/NPDES permit.
7. On March 1, 2013, WVDEP personnel conducted a review of additional DMRs submitted by Dickirson on January 28, 2013. During this review, the following violations of the terms and conditions of Dickirson's WV/NPDES permit were observed:
 - a. Section A-Five (5) exceedances of Dickirson's permit parameters (Table 2) were observed. These exceedances can be further defined as:
 - i. Minor violations- three (3)
 - ii. Major violations- two (2)

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. Dickirson shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of the effective date of this Order, Dickirson shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Dickirson will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

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 Dickirson's permit violations, Dickirson shall be assessed a civil administrative penalty of twenty-one thousand four hundred seventy dollars (\$21,470) 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. Dickirson 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, Dickirson 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, Dickirson 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 Dickirson 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, Dickirson 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 Dickirson becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Dickirson 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 Dickirson 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 Dickirson (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 Dickirson 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 Dickirson 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 Dickirson, its successors and assigns.
7. This Order shall terminate upon Dickirson's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Ms. Ashley Hosaflook
Dickirson Corp.

3-12-13

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

Table One:
Dickirson Corp. DMR Exceedances

Outlet 001 DMR Exceedances - AVG. MONTHLY - October 2010 - October 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
2-2011	BOD	lbs/day	0.87	1.52	75%	-	X	-
2-2011	BOD	mg/L	11.5	21.39	86%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY - October 2010 - October 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
11-2011	TSS	mg/L	60	81	35%	X	-	-
2-2012	TSS	mg/L	60	67	12%	X	-	-
5-2012	TSS	mg/L	60	80	33%	X	-	-
11-2011	Oil and Grease	mg/L	15	40.8	172%	-	X	-

Outlet 101 DMR Exceedances - pH MAX. DAILY (Min.) - October 2010 - October 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
2-2011	pH	S.U.	6.0	2.81	425.3%		X	
9-2011	pH	S.U.	6.0	5.13	116.0%		X	
2-2012	pH	S.U.	6.0	3.52	330.7%		X	

Outlet 101 DMR Exceedances - MAX. DAILY - October 2010 - October 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
9-2011	Oil and Grease	mg/L	15	15.1	1%	X	-	-

Outlet 001 & 101 Totals						Degree of non-compliance		
						Min	Mod	Maj
						4	6	0

Table Two:
Additional Dickirson Corp DMR Exceedances

Outlet 001 DMR Exceedances - MAX. DAILY						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
8/11	Oil and Grease	mg/L	15	364	2327%	-	-	X
3/12	Total Suspended Solids	mg/L	60	104	73%	X	-	-

Outlet 101 DMR Exceedances - MAX. DAILY						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
10/10	Oil and Grease	mg/L	15	23	53%	X	-	-
8/11	Oil and Grease	mg/L	15	174	1060%	-	-	X

Outlet 101 DMR Exceedances - pH MAX. DAILY (Min.)						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
10/11	pH	S.U.	6.0	5.89	14.7%	X		

Outlet 001 and 101 Totals	Degree of non-compliance		
	Min	Mod	Maj
	3	0	2

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Dickirson Corp. **Receiving Stream:** Grasslick Run (001) & Cox Fork (002)

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#														
			3ai	3aii	5e	7ai	7aii										
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1	0	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1	0	1	1										
d)	Length of Time	1 to 3	1	1	1	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	1	0	1	1										
Average Potential for Harm Factor			1	1	0.4	1	1	No									
2)	Extent of Deviation Factor	Factor Range															
	Degree of Non-Compliance	1 to 3	1	2	3	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 <=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 -			\$0
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	(\$2,680)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,680)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$5,330)
Penalty =			\$21,470

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:	