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: John Konrady
Felman Production, Inc.
4442 Graham Station Rd
Letart, WV 25253

DATE: June 21, 2012

ORDER NO.: 7569

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 Felman Production, Inc. (hereinafter "Felman").

FINDINGS OF FACT

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

1. Felman operates a ferroalloy manufacturing facility located near Letart, Mason County, West Virginia. Felman was issued WV/NPDES Water Pollution Control Permit No. WV0000426 on November 17, 2006.

2. Order No. MM-06-001 was issued by the West Virginia Department of Environmental Protection (WVDEP) on January 23, 2006. The Order required Felman to, within one year of initiating furnace operations or 540 days after closing, whichever comes first, provide WVDEP with a final report on the complete excavation and movement of the calcium disilicate wastes from the old landfill. The report was ordered to include the following:
   a. An assessment of the total quantity of calcium disilicate wastes removed.
   b. An investigation report which determined whether the old industrial landfill caused environmental contamination to the soils or the groundwater.

3. On September 14, 2011, WVDEP personnel conducted an inspection and determined that Felman failed to comply with Order No. MM-06-001, because it did not submit the aforementioned final report. Failure to comply with the the Order is a violation of WV State Code 22-11-16.

4. On February 7, 2012, WVDEP personnel conducted a review of facility records from January 2010 through December 2011. During this review, the following violations were observed:
    a. Eighteen (18) exceedances of Felman's permit parameters were observed and documented (Table 1). Each exceedance is a violation of the terms and conditions of Felman's WV/NPDES permit (Section A). These exceedances can be further defined as:
        i. Minor violations-13
        ii. Moderate violations-4
        iii. Major violations-1

5. On June 5, 2012, WVDEP personnel and representatives of Felman met to discuss the terms and conditions of this Order.

6. On June 6, 2012, WVDEP personnel conducted a review of facility records from the time period of January 2012 through April 2012. During this review, the following violations were observed:
    a. Six (6) exceedances of Felman's permit parameters were observed and documented (Table 2). Each exceedance is a violation of the terms and conditions of Felman's WV/NPDES permit (Section A). These exceedances can be further defined as:
        i. Minor violations-6

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. Felman 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 thirty (30) days of entry of this Order, Felman shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Felman 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
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. Within thirty (30) days of entry of this Order, Felman shall submit a final report concerning the complete excavation and movement of the calcium disilicate wastes from the old landfill. The report shall include the following:
    a. An assessment of the total quantity of calcium disilicate wastes removed.
    b. An investigation report determining whether the old industrial landfill caused environmental contamination to the soils or the groundwater.

4. Because of Felman's West Virginia Code and permit violations, Felman shall be assessed a civil administrative penalty of thirty thousand fifty dollars ($30,050) 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. Felman 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, Felman 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, Felman 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 Felman 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, Felman 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 Felman 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 Felman 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 Felman (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 Felman 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 Felman 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 Felman, its successors and assigns.

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

John Konrady
Felman Production, Inc.

JUNE 27, 2012
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

_____
Date

revised January 2011

RECEIVED
JUL 3 - 2012
ENVIRONMENTAL
ENFORCEMENT

Table One: Felman Exceedance Summary

Outlet 001 DMR Exceedances - MAX. DAILY - Jan/2010 through Dec/2011						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
2-1-10	Total Suspended Solids	mg/l	60	119	98%	X	-	-

Outlet 001 DMR Exceedances - pH MAX. DAILY (Max.) - Jan/2010 through Dec/2011						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
12-1-11	pH	S.U.	9.0	9.5	66.7%	X		
8-1-11	pH	S.U.	9.0	9.3	40.0%	X		
6-1-11	pH	S.U.	9.0	10.2	160.0%		X	

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	3	1	0

Table One: Felman Exceedance Summary

Outlet 201 DMR Exceedances - MAX. DAILY - Jan/2010 through Dec/2011						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
8-1-11	Total Suspended Solids	mg/l	60	72	20%	X	-	-

Outlet 201 Totals	Degree of non-compliance		
	Min	Mod	Maj
	1	0	0

Table One: Felman Exceedance Summary

Outlet 101 DMR Exceedances - AVG. MONTHLY -Jan/2010 through Dec/2011						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
12-1-11	Total Recoverable Zinc	ug/l	172	180	5%	X	-	-
11-1-11	Total Recoverable Zinc	ug/l	172	370	115%	-	X	-
10-1-11	Total Recoverable Zinc	ug/l	172	190	10%	X	-	-
5-1-11	Total Recoverable Zinc	ug/l	172	790	359%	-	-	X
3-1-11	Total Recoverable Zinc	ug/l	172	610	255%	-	X	-
2-1-11	Total Recoverable Zinc	ug/l	172	180	5%	X	-	-
5-1-10	Total Recoverable Zinc	ug/l	172	250	45%	-	X	-

Outlet 101 DMR Exceedances - MAX. DAILY - Jan/2010 through Dec/2011						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
9-1-11	Total Suspended Solids	mg/l	60	78	30%	X	-	-
5-1-11	Total Suspended Solids	mg/l	60	84	40%	X	-	-
5-1-11	Total Recoverable Zinc	ug/l	451	790	75%	X	-	-
3-1-11	Total Suspended Solids	mg/l	60	70	17%	X	-	-
3-1-11	Total Recoverable Zinc	ug/l	451	610	35%	X	-	-

Outlet 101 DMR Exceedances - pH MAX. DAILY (Max.) - Jan/2010 through Dec/2011						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
6-1-11	pH	S.U.	9.0	9.4	53.3%	X		

Outlet 101 Totals	Degree of non-compliance		
	Min	Mod	Maj
	9	3	1

Table Two:
Felman Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - January - April 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
4-1-12	Fecal Coliform	cnts/100ml	200	280	40%	X	-	-

Outlet 001 DMR Exceedances - pH MAX. DAILY (Max.) - January - April 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
1-1-12	pH	S.U.	9.0	9.4	53.3%	X		

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

Table Two:
Felman Exceedance Summary

Outlet 101 DMR Exceedances - AVG. MONTHLY - January - April 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
2-1-12	Total Recoverable Zinc	ug/l	172	230	34%	X	-	-
1-1-12	Total Recoverable Zinc	ug/l	172	210	22%	X	-	-

Outlet 101 DMR Exceedances - MAX. DAILY - January - April 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
4-1-12	Total Suspended Solids	mg/l	60	64	7%	X	-	-

Outlet 101 DMR Exceedances - pH MAX. DAILY (Max.) - January - April 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
4-1-12	pH	S.U.	9.0	9.7	93.3%	X		

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

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Felman Production, Inc. **Receiving Stream:** Ohio River

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.

			FOF#												
1)	**Potential for Harm Factor**	**Factor Range**	**3**	**4i**	**4ii**	**4iii**	**6ai**								
a)	Amount of Pollutant Released	1 to 3	2	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1								
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1								
d)	Length of Time	1 to 3	3	1	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1								
	Average Potential for Harm Factor		1.6	1	1	1	1	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3	3	1	2	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.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

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

		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
3	Moderate	Major	$4,600	1	$4,600
4i	Minor	Minor	$1,000	13	$13,000
4ii	Minor	Moderate	$1,500	4	$6,000
4iii	Minor	Major	$2,000	1	$2,000
6ai	Minor	Minor	$1,000	6	$6,000
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
Total Base Penalty					$31,600

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 -	5		$1,580
6.2.b.4 - Compliance/noncompliance history -	10		$3,160
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	($3,160)
6.2.b.3 - Cooperation with the Secretary		10	($3,160)
6.2.b.5 - Ability to Pay			$0
Penalty Adjustments			**($1,550)**
Penalty =			**$30,050**

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:	