



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: HG Energy LLC
Attn: Matthew McGuire
5260 Dupont Rd.
Parkersburg, WV 26101

DATE: February 11, 2015

ORDER NO.: 8199

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 HG Energy LLC (hereinafter “HG Energy”).

FINDINGS OF FACT

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

1. HG Energy is conducting land disturbance activities associated with a twenty-two (22) acre Hoyt Gathering Pipeline construction site located near Wileyville, Wetzel County, West Virginia. HG Energy was issued West Virginia General Water Pollution Control Permit No. WV0116815, Registration No. WVR310085, on January 28, 2014.
2. HG Energy is conducting land disturbance activities associated with a 2.69 acre 406 Fill Area construction site located near Wileyville, Wetzel County, West Virginia. HG Energy was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR107048, on May 30, 2014.
3. On August 5, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the Hoyt Gathering Pipeline. During the inspection, violations of the following sections of WV Legislative Rules and HG Energy’s permit were observed and documented:

- a. 47CSR2 Section 3.2.b-HG Energy caused conditions not allowable in waters of the State. Specifically, sediment deposits originating from HG Energy's right of way were blocking Garrison Fork at the right of way and downstream of the right of way.
- b. 47CSR2 Section 3.2.b- HG Energy caused conditions not allowable in waters of the State. Specifically, sediment deposits originating from HG Energy's right of way were blocking an unnamed tributary (UT) of Fourmile Run for approximately thirty (30) feet.
- c. 47CSR11 Section 2.2.a.-HG Energy failed to immediately report a spill. Specifically, sumps installed on HG Energy's right of way failed, allowing sediment, rock, Best Management Practices (BMPs) and other debris to enter into a UT of Fourmile Run.
- d. 47CSR11 Section 2.2.a.-HG Energy failed to immediately report a spill. Specifically, sumps installed on HG Energy's right of way overtopped, allowing sediment, rock, and BMPs to enter into Garrison Fork.
- e. 47CSR11 Section 2.5-HG Energy failed to take any and all measures necessary to contain a spill or discharge. Specifically, a sump installed on HG Energy's right of way overtopped, allowing sediment, rock, and BMPs to enter into Garrison Fork.
- f. 47CSR11 Section 2.5-HG Energy failed to take any and all measures necessary to contain a spill or discharge. Specifically, sumps installed on HG Energy's right of way failed, allowing sediment, rock, and BMPs to enter into a UT of Fourmile Run.
- g. Section D.1-HG Energy failed to properly operate and maintain all systems of treatment. Specifically:
 - i. Sumps installed on HG Energy's right of way near Garrison Fork were full and had overtopped.
 - ii. Improper maintenance of sumps and trenches near a UT of Fourmile Run caused catastrophic failure of sumps.
 - iii. Waterbar outlet protection had been covered with a spoil pile.
 - iv. Wattles protecting a UT of Fourmile Run were overtopping and/or compromised.
 - v. A timber mat bridge allowed sediment to fall between timber mats and into the stream.
 - vi. BMPs were observed in both streams.
- h. Section B-HG Energy failed to comply with its approved Storm Water Pollution Prevention Plan (SWPPP). Specifically, HG Energy:
 - i. Replaced the approved 24" wattles with 8" wattles.
 - ii. Failed to install the required waterbars.
 - iii. Failed to properly key in timber mat bridges.
 - iv. Failed to conduct inspection of BMPs every seven (7) calendar days or within twenty-four (24) hours of a rain event.
 - v. Failed to provide outlet protection for all waterbars.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W-NW-TAM-080614-001; W-NW-TAM-080614-002; W-NW-TAM-080614-003; W-NW-TAM-080614-004; W-NW-TAM-080614-005; W-NW-TAM-080614-006; W-NW-TAM-080614-007; and W-NW-TAM-080614-008 were issued to HG Energy.

4. On August 13, 2014, WVDEP personnel conducted an inspection of the 406 Fill Area. During the inspection, violations of the following sections of WV Legislative Rules and HG Energy's permit were observed and documented:

- a. 47CSR2 Section 3.2.b- HG Energy caused conditions not allowable in waters of the State. Specifically, sediment deposits originating from HG Energy's Fill Area project were observed in a UT of Garrison Fork.
- b. Section G.4.e.2.A.ii.f-HG Energy failed to protect fill slopes by using measures to divert runoff away from the fill slopes to conveyance measures such as pipe slope drains or stable channels.
- c. Section B-HG Energy failed to comply with the approved SWPPP. Specifically, sediment and erosion control devices were not in place.
- d. Section D.1-HG Energy failed to at all times properly operate and maintain all facilities and systems of treatment and control. Specifically, silt fence was not installed properly, and several areas were knocked over, torn, and/or partially buried.

As a result of the aforementioned violations, NOV Nos. W-NW-TAM-081314-001, W-NW-TAM-081314-002, W-NW-TAM-081314-003, and W-NW-TAM-081314-004 were issued to HG Energy.

5. On August 13, 2014, WVDEP personnel conducted an inspection of the Hoyt Gathering Pipeline. During the inspection, violations of the following sections of WV Legislative Rule and HG Energy's permit were observed and documented:
 - a. Section B-HG Energy failed to comply with its approved SWPPP. Specifically:
 - i. HG Energy failed to properly install waterbars.
 - ii. Super silt fence was not keyed in at the trench sump.
 - iii. Stream banks were not stabilized.
 - iv. Outlet protection was not provided for all waterbars.
 - v. Trench plugs were not installed.
 - b. Section D.1-HG Energy failed to properly operate and maintain all systems of treatment. Specifically:
 - i. Sediment laden water was flowing around installed super silt fence.
 - ii. Trench sumps were full, and the western trench sump was overflowing.
 - iii. Dewatering devices were not installed.
 - iv. Excessive mud was on Hoyt Rd.
 - v. The walls of the trench were collapsing and, in conjunction with ground water and surface water infiltration, were creating mud flows.
 - c. 47CSR2 Section 3.2.a-HG Energy caused conditions not allowable in waters of the State. Specifically, sediment laden water originating from HG Energy's pipeline project was entering into Garrison Fork, creating a visible plume of settleable solids at the right of way and downstream.
 - d. Section G.4.c-HG Energy failed to modify its permit to include all disturbed area. Specifically, a section of pipeline being installed along Hoyt Rd. for more than 2,400 feet west of the permitted right of way was outside the limits of disturbance.

As a result of the aforementioned violations, NOV Nos. W-NW-TAM-081314-005, W-NW-TAM-081314-006, W-NW-TAM-081314-007, and W-NW-TAM-081314-008 were issued to HG Energy.

6. On November 6, 2014, West Virginia General Water Pollution Control Permit No. WV0116815, Registration No. WVR310085, was transferred from HG Energy to American Energy-Marcellus, LLC.
7. On January 21, 2015, WVDEP personnel and representatives of HG Energy 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. HG Energy shall immediately take all measures to initiate compliance with all terms and conditions of its West Virginia General Water Pollution Control Permit, its WV/NPDES permit, and pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, HG Energy shall submit geo-referenced line work and placement, including access roads, data in either SHP or KMZ format for all HG Energy pipeline projects that are required to obtain a Water Pollution Control Stormwater Permit Associated with Oil and Gas Construction Activities currently in the construction phase or in the restoration phase. For a period of eighteen (18) months following the effective date of this Order, geo-referenced line work and placement data, including access roads, shall be submitted for all new projects that are required to obtain a Water Pollution Control Stormwater Permit Associated with Oil and Gas Construction Activities. Geo-referenced line work and placement data, including access roads, shall be submitted during the permitting process to:

**WVDEP Environmental Inspector Supervisor
Bradley Swiger
Bradley.C.Swiger@wv.gov
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road
Fairmont, WV 26554**

3. Within ninety (90) days of the effective date of this Order, HG Energy shall conduct and submit an analysis that explains the cause(s) of the conditions that led to the issuance of the aforementioned NOV's and a report that details the remediation steps performed, as well as any additional remediation or resulting change in HG Energy's policies or procedures. The analysis shall address, but not be limited to, construction sequence, right-of-way selection, reclamation protocol, employee training, operational management, engineering design standards, management functionality, reporting procedures, and all other accountability elements. HG Energy shall prepare and provide a written report to WVDEP of its findings and a plan of corrective actions to address the root cause(s) of BMP failures.

The findings and plan shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road
Fairmont, WV 26554**

A copy of the findings and plan shall be submitted to:

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

4. Because of HG Energy's Legislative Rule and permit violations, HG Energy shall be assessed a civil administrative penalty of fifty-six thousand one hundred seventy-nine dollars (\$56,179) 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. HG Energy 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, HG Energy 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, HG Energy 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 HG Energy 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, HG Energy 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 HG Energy becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and HG Energy 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 HG Energy 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 HG Energy (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 HG Energy 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 HG Energy 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 HG Energy, its successors and assigns.
7. This Order shall terminate upon HG Energy's notification of full compliance with this "Order for Compliance" and verification of this notification by WVDEP.

RECEIVED

FEB 23 2015

ENVIRONMENTAL
ENFORCEMENT


Matthew McGuire
HG Energy LLC

2-16-15
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

**WV Department of Environmental Protection
Environmental Enforcement
Photo Log**

Company Name: HG Energy
 Facility Name: Hoyt Gathering Pipeline
 Location: 39°36.6078'N 80°36.8410'W
 Stream: UT of Fourmile Run

Photo #	Date	Time	Description	Notice Of Violation
DSCN1460	8/05/14	17:21	Overview of ROW. Pipeline on far side of ROW slid down trench.	
DSCN1455	8/05/14	17:16	Waterbar without outlet protection as indicated by approved SWPPP.	W-NW-TAM-080614-008
DSCN1461	8/05/14	17:25	Failed sumps. Stream filled with sediment, rock, BMP, cribbing, piping and sandbags.	W-NW-TAM-080614-007
DSCN1471	8/05/14	17:30	Alternative view of photo DSCN1461.	W-NW-TAM-080614-007
DSCN1473	8/05/14	17:31	Downstream of ROW. Stream filled with sediment, rock, cribbing and sandbags. Material is approximately six inches deep in this area.	W-NW-TAM-080614-002
DSCN1474	8/05/14	17:32	Downstream looking up stream toward ROW. Most of the heavy debris and material ended here.	W-NW-TAM-080614-002
DSCN1464	8/05/14	17:27	ROW on upstream side of trench. Stream filled with sediment and rock. BMPs in stream. Compromised BMPs.	W-NW-TAM-080614-002
DSCN1466	8/05/14	17:28	Timber mat bridge not keyed in allowing sediment to enter stream.	W-NW-TAM-080614-008
DSCN1469	8/05/14	17:28	Photo taken upstream of ROW looking downstream. Stream filled.	W-NW-TAM-080614-002
DSCN1467	8/05/14	17:28	Taken from same position as photo DSCN1469 looking upstream from ROW.	W-NW-TAM-080614-002

Photographer Tonya Mather 



DSCN1460: Overview of ROW. Pipeline on far side of ROW slid down trench.



DSCN1455: Waterbar without outlet protection as indicated by approved SWPPP.



DSCN1461: Failed sumps. Stream filled with sediment, rock, BMP, cribbing, piping and sandbags.



DSCN1471: Alternative view of photo DSCN1461.



DSCN1473: Downstream of ROW. Stream filled with sediment, rock, cribbing and sandbags. Material is approximately six inches deep in this area.



DSCN1474: Downstream looking up stream toward ROW. Most of the heavy debris and material ended here.



DSCN1464: ROW on upstream side of trench. Stream filled with sediment and rock. BMPs in stream.
Compromised BMPs.



DSCN1466: Timber mat bridge not keyed in allowing sediment to enter stream.



DSCN1469: Photo taken upstream of ROW looking downstream. Stream filled.



DSCN1467: Taken from same position as photo DSCN1469 looking upstream from ROW.

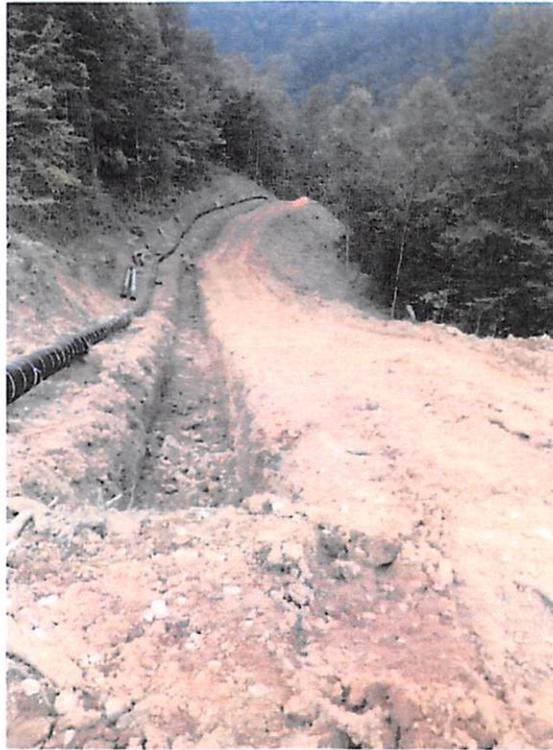
**WV Department of Environmental Protection
Environmental Enforcement
Photo Log**

Company Name: HG Energy
 Facility Name: Hoyt Gathering Pipeline
 Location: 39°36.4556'N 80°37.3392'W
 Stream: Garrison Fork

Photo #	Date	Time	Description	Notice Of Violation
IMG_0503	8/6/14	09:40	Pipeline ROW with open trench.	
IMG_504	8/6/14	09:42	Wattles are not the right size. SWPPP indicated 24" for this area. Wattles not placed as indicated on SWPPP.	W-NW-TAM-080614-008
IMG_510	8/6/14	09:54	Disturbed area outside of LOD. Photo taken standing on working downslope side of ROW looking right.	
IMG_511	8/6/14	09:54	Disturbed area outside of LOD. Taken from same position as photo IMG_510 looking left.	
IMG_518	8/6/14	09:56	Unmaintained sump. Sump bypass compromising wattles.	W-NW-TAM-080614-007
IMG_516	8/6/14	09:56	Wattles, sediment and rock in stream from sump bypass in photo IMG_518.	W-NW-TAM-080614-001
IMG_525	8/6/14	10:01	Sediment and wattle in stream under timber mat bridge without geotech.	W-NW-TAM-080614-008
IMG_529	8/6/14	10:09	Wattles in stream.	W-NW-TAM-080614-001
IMG_530	8/6/14	10:09	Sediment entering stream where timber mat bridge is not keyed in.	W-NW-TAM-080614-007
IMG_521	8/6/14	09:58	Downstream. Sediment deposits on rocks and in stream.	W-NW-TAM-080614-001



Photographer Tonya Mather



IMG_0503: Pipeline ROW with open trench.



IMG_504: Wattles are not the right size. SWPPP indicated 24" for this area. Wattles not placed as indicated on SWPPP.



IMG_510: Disturbed area outside of LOD. Photo taken standing on working downslope side of ROW looking right.



IMG_511: Disturbed area outside of LOD. Taken from same position as photo IMG_510 looking left.



IMG_518: Unmaintained sump. Sump bypass compromising wattles.



IMG_516: Wattles, sediment and rock in stream from sump bypass in photo IMG_518.



IMG_525: Sediment and wattle in stream under timber mat bridge without geotech.



IMG_529: Wattles in stream.



IMG_530: Sediment entering stream where timber mat bridge is not keyed in.



IMG_521: Downstream. Sediment deposits on rocks and in stream.

**WV Department of Environmental Protection
Environmental Enforcement
Photo Log**

Company Name: HG Energy
 Facility Name: WVR310085 - Hoyt Gathering Pipeline
 Location: 39°36.4556'N 80°37.3392'W
 Stream: Garrison Fork

Photo #	Date	Time	Description	Notice Of Violation
DSCN1525	8/13/14	10:34	Pipeline being installed along Hoyt Rd. off permitted limits of disturbance. Excessive mud on Hoyt Rd.	W-NW-TAM-081314-006; W-NW-TAM-081314-008
DSCN1534	8/13/14	11:00	One of several areas where trench is collapsing.	W-NW-TAM-081314-006
DSCN1530	8/13/14	10:51	Groundwater and surface water infiltration flowing in trench.	
DSCN1536	8/13/14	11:01	Stream banks not stabilized.	W-NW-TAM-081314-005
DSCN1537	8/13/14	11:02	Sediment laden water bypassing super silt fence.	W-NW-TAM-081314-006
DSCN1488	8/13/14	10:51	Trench sumps full and overflowing.	W-NW-TAM-081314-006
DSCN1538	8/13/14	11:02	Silt fence not keyed in allowing for sediment laden water to pass. Photo taken from stream side.	W-NW-TAM-081314-005
DSCN1490	8/13/14	10:53	Sediment laden water entering Garrison Fork. Photo is same area as photo DSCN1538.	W-NW-TAM-081314-007
DSCN1539	8/13/14	11:02	Conditions not allowable in Garrison Fork.	W-NW-TAM-081314-007
DSCN1486	8/13/14	10:45	Waterbar not installed properly. No outlet protection.	W-NW-TAM-081314-005

Photographer Tonya Mather



DSCN1525: Pipeline being installed along Hoyt Rd. off permitted limits of disturbance. Excessive mud on Hoyt Rd.



DSCN1534: One of several areas where trench is collapsing.



DSCN1530: Groundwater and surface water infiltration flowing in trench.



DSCN1536: Stream banks not stabilized.



DSCN1537: Sediment laden water bypassing super silt fence.



DSCN1488: Trench sumps full and overflowing.



DSCN1538: Silt fence not keyed in allowing for sediment laden water to pass. Photo taken from stream side.



DSCN1490: Sediment laden water entering Garrison Fork. Photo is same area as photo DSCN1538.



DSCN1539: Conditions not allowable in Garrison Fork.



DSCN1486: Waterbar not installed properly. No outlet protection.

**WV Department of Environmental Protection
Environmental Enforcement
Photo Log**

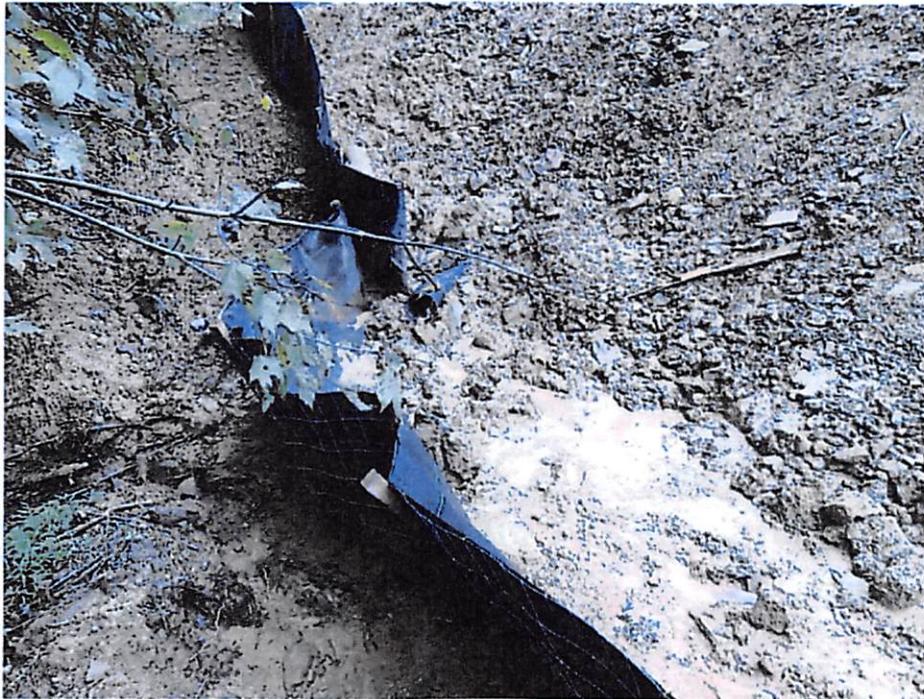
Company Name: HG Energy
 Facility Name: 406 Fill Area
 Location: 39°36'40.23"N 80°37'09.31"W
 Stream: UT of Garrison Fork

Photo #	Date	Time	Description	Notice Of Violation
DSCN1560	8/13/14	11:56	Haul road without silt fence as required by SWPPP.	W-NW-TAM-081314-003
DSCN1567	8/13/14	12:00	Silt fence not being maintained allowing for sediment to leave site.	W-NW-TAM-081314-004
DSCN1577	8/13/14	12:05	Erosion rills on face of fill slope.	W-NW-TAM-081314-002
DSCN1583	8/13/14	12:10	Silt fence not being maintained. Sediment leaving the site.	W-NW-TAM-081314-004
DSCN1586	8/13/14	12:16	Site overview. Diversions and sumps have not been installed.	W-NW-TAM-081314-002
DSCN1513	8/13/14	12:02	Silt fence not being maintained. Sediment leaving site.	W-NW-TAM-081314-004
DSCN1507	8/13/14	12:00	Silt fence not keyed in.	W-NW-TAM-081314-004
DSCN1570	8/13/14	12:02	Sediment deposits in UT of Garrison Fork.	W-NW-TAM-081314-001
DSCN1572	8/13/14	12:02	Sediment deposits in UT of Garrison Fork.	W-NW-TAM-081314-001

Photographer Tonya Mather



DSCN1560: Haul road without silt fence as required by SWPPP.



DSCN1567: Silt fence not being maintained allowing for sediment to leave site.



DSCN1577: Erosion rills on face of fill slope.



DSCN1583: Silt fence not being maintained. Sediment leaving the site.



DSCN1586: Site overview. Diversions and sumps have not been installed.



DSCN1513: Silt fence not being maintained. Sediment leaving site.



DSCN1507: Silt fence not keyed in.



DSCN1570: Sediment deposits in UT of Garrison Fork.



DSCN1572: Sediment deposits in UT of Garrison Fork.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: HG Energy LLC **Receiving Stream:** Garrison Fork and UT of Fourmile Run

Treatment System Design Maximum Flow: N/A MGD

Treatment System Actual Average Flow: N/A MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#												
			3.a.	3.b.	3.c.	3.d.	3.e.	3.f.	3.g.	3.h.	4.a.	4.b.	4.c.	4.d.	5.a.
a)	Amount of Pollutant Released	1 to 3	2	3	1	1	2	2	2	2	3	2	1	2	2
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	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	1	1	1	1
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1	2
e)	Actual Exposure and Effects thereon	0 to 3	3	3	1	1	2	2	2	2	3	2	1	2	2
Average Potential for Harm Factor			1.6	1.8	1	1	1.4	1.4	1.4	1.4	1.8	1.4	1	1.4	1.6
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	2	2	2	2	2	2	3	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
3.a.	Moderate	Major	\$4,600	1	\$4,600
3.b.	Moderate	Major	\$4,800	1	\$4,800
3.c.	Minor	Moderate	\$1,500	1	\$1,500
3.d.	Minor	Moderate	\$1,500	1	\$1,500
3.e	Moderate	Moderate	\$3,400	1	\$3,400
3.f	Moderate	Moderate	\$3,400	1	\$3,400
3.g	Moderate	Moderate	\$3,400	1	\$3,400
3.h.	Moderate	Moderate	\$3,400	1	\$3,400
4.a	Moderate	Major	\$4,800	1	\$4,800
4.b.	Moderate	Moderate	\$3,400	1	\$3,400
4.c.	Minor	Moderate	\$1,500	1	\$1,500
4.d.	Moderate	Moderate	\$3,400	1	\$3,400
5.a.	Moderate	Moderate	\$3,600	1	\$3,600
5.b.	Moderate	Moderate	\$3,600	1	\$3,600
5.c.	Moderate	Major	\$4,200	1	\$4,200
5.d.	Minor	Moderate	\$1,200	1	\$1,200
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					\$51,700

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 -	15		\$7,755
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$7,034		\$7,034
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	(\$5,170)
6.2.b.3 - Cooperation with the Secretary		10	(\$5,170)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$4,479
Penalty =			\$56,179

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	\$819
O&M expenses and cost of equipment/materials needed for compliance	\$6,215
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$7,034
Comments: Delayed cost of erosion and sediment controls (waterbars, sumps, filter socks, de-watering bags, construction entrances, silt fence, timber matting, etc.). Avoided cost of inspections.	