



west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Craig Kaderavek
Heartwood Forestland Fund VI, L.P.
19045 Stone Mountain Road
Abingdon, VA 24210

DATE: June 25, 2012

ORDER NO.: 7601

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 Heartwood Forestland Fund VI, L.P. (hereinafter "Heartwood").

FINDINGS OF FACT

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

1. Forestland Group, LLC operates and manages a land disturbance associated with construction activity referred to as Crown Tract Pond Removal, located near Ragland, Mingo County, West Virginia. The property is owned by Heartwood Forestland Fund VI, L.P., and Heartwood Forestland Advisors VI, LLC is the general partner.
2. On March 9, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:
 - a. 47CSR2 Section 3.2.a-Forestland Group, LLC created conditions not allowable by causing or allowing distinctly visible settleable solids in waters of the State. Specifically, there was a breach in the dewatering device of an existing pond.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W12-30-132-MBC was issued to Forestland Group, LLC.

Promoting a healthy environment.

3. On March 21, 2012, WVDEP personnel spoke with Chris Cartwright, of Landmark Forestry, LLC. During the conversation it was determined that the Crown Tract Pond Removal project exceeded one (1) acre in size, thus requiring a WV/NPDES permit for Storm Water Associated with Construction Activity. Failure by Forestland Group, LLC to obtain the appropriate WV/NPDES permit is a violation of WV State Code 22-11-8 and WV Legislative Rule 47CSR10.

As a result of the aforementioned violation, Notice of Violation (NOV) No. I12-30-001-JCC was issued to Forestland Group, LLC.

4. On March 28, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and WV State Code were observed and documented:
 - a. 47CSR2 Section 3.2.a-Forestland Group, LLC caused or allowed distinctly visible settleable solids in waters of the State, thereby creating conditions not allowable. Specifically, Forestland Group, LLC routed clean water around the pond removal area through un-stabilized diversions. In addition, Forestland Group, LLC pumped sediment laden water out of the pond area and into the stream without first going through an appropriate Best Management Practice (BMP).
 - b. 22-11-8-Forestland Group, LLC disturbed greater than one (1) acre of land (including the off-site spoil/waste area) without authorization pursuant to a WV/NPDES permit for Storm Water Associated with Construction activity.

As a result of the aforementioned violations, Notice of Violations (NOV) Nos. W12-30-134-MBC and W12-30-135-MBC were issued to Forestland Group, LLC.

5. On April 6, 2012, Heartwood was issued WV/NPDES Water Pollution Control Permit No. WVR106013.
6. On May 31, 2012, WVDEP personnel and representatives of Heartwood 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. Heartwood shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within fifteen (15) days of the effective date of this Order, Heartwood shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Heartwood will achieve compliance with all pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Satellite 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 Heartwood' West Virginia Code and Legislative Rule violations, Heartwood shall be assessed a civil administrative penalty of fourteen thousand one hundred ninety dollars (\$14,190) 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 be mailed to:**

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

OTHER PROVISIONS

1. Heartwood 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, Heartwood 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, Heartwood 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 Heartwood 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, Heartwood 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 Heartwood 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 Heartwood 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 Heartwood (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 Heartwood 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 Heartwood 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 Heartwood, its successors and assigns.

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

Craig Kaderavek

Heartwood Forestland Fund VI, L.P.
Craig Kaderavek

7-2-12

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

RECEIVED

JUL 5 - 2012

ENVIRONMENTAL
ENFORCEMENT



- Discharge from existing pond.



- Discharge from existing pond, which is also the receiving stream.



- Discharge from the existing pond and the receiving stream.



- Receiving stream.



- Clean water being re-routed through un-stabilized diversions.



- Pond removal area land disturbance.



- Clean water being re-routed through un-stabilized diversions.



- Disturbance without sediment control



- Clean water being re-routed through an un-stabilized diversion.



- Clean water picking up sediment in the un-stabilized diversions. In-stream hay bales and silt fence are being used.



- Re-routed stream being discharged over the side of the pond dam. In-stream silt fence and hay bales being used, and erosion noted as water discharging down the hill.



- Receiving stream shown muddy, with silt fence and hay bales being used.



- Off-site spoil/waste area.



- Off-site spoil/waste area.

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 -	20		\$2,360
6.2.b.4 - Compliance/noncompliance history	10		\$1,180
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			\$0
6.2.b.3 - Cooperation with the Secretary		10	(\$1,180)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$2,390
Penalty =			\$14,190

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:	