



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
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12
AND THE
SOLID WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 15**

TO: Jackson County Board of Education
Keith Burdette, Assistant Superintendent
1 School Street
Ripley, West Virginia 25271

DATE: October 30, 2013

ORDER NO.: MM-14-04

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., Chapter 22, Article 12, Section 1 et seq., and Chapter 22, Article 15, Section 1 et seq. to Jackson County Board of Education (hereinafter "Jackson County BOE").

FINDINGS OF FACT

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

1. Jackson County BOE is conducting land disturbance activity near Kenna, Jackson County, West Virginia. Jackson County BOE was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106264, on October 11, 2012.
2. On February 11, 2013, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection,

Promoting a healthy environment.

violations of the following sections of WV Legislative Rules and Jackson County BOE's WV/NPDES permit were observed and documented:

- a. Section G.4.d.1.C-The permittee failed to maintain a clean and orderly project.
- b. Section D.1-The permittee failed to operate and maintain all erosion control devices. Specifically, no riser pipe was installed at the sediment basin.
- c. Section G.4.e.2.A.ii.c-The permittee failed to provide inlet protection for the erosion and sediment control structure.
- d. 47CSR58 Section 7.1-Jackson County BOE allowed a petroleum product to flow onto or under the land surface in such a manner that could impact groundwater quality.
- e. Section G.4.e.2.C.i and 33CSR1 Section 7.1.f-The permittee openly burned solid waste on the permitted site.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. I13-18-31-GSR through I13-18-35-GSR were issued to Jackson County BOE.

3. On May 10, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Jackson County BOE's WV/NPDES permit were observed and documented:

- a. Section G.4.d.1.C-The permittee failed to maintain a clean and orderly project.
- b. Section D.1-The permittee failed to operate and maintain all erosion control devices. Specifically, no sump was installed at Outlet 002, the diversion berm was not completed, and the riser pipe at the sediment basin was leaking.
- c. Section G.4.e.2.A.ii.c-The permittee failed to provide inlet protection for the erosion and sediment control structure.
- d. 47CSR58 Section 7.1-Jackson County BOE allowed a petroleum product to flow onto or under the land surface in such a manner that could impact groundwater quality.
- e. Section G.4.e.2.A.ii.j-The permittee allowed sediment-laden water to leave the site without going through an appropriate best management practice.
- f. Section G.4.e.1.E-The permittee failed to install stone access entrance and exits to reduce tracking of sediment onto public or private roads.
- g. Section G.4.e.2.A.i-The permittee failed to temporary seed and mulch all areas where construction activities had ceased for more than seven (7) days.
- h. Section C.15-The permittee failed to post an outlet marker at all permitted outlets from the construction site.
- i. Section G.4.e.2.D.i-The permittee failed to inspect and clean all adjacent public and private roads of debris originating from the construction site.
- j. Section G.4.e.2.D-The permittee failed to inspect all erosion control devices at least once every seven (7) calendar days and within twenty-four (24) hours after any storm event of greater than 0.5 inches of rain per twenty-four (24) hour period.

As a result of the aforementioned violations, NOV Nos. I13-18-160-GSR through I13-18-169-GSR were issued to Jackson County BOE.

4. Jackson County BOE owns a large non-stabilized slip on the edge of the property bordering the land of Kenneth and Connie Thomas.

5. On August 29, 2013, WVDEP personnel and representatives of Jackson County BOE 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., Chapter 22, Article 12, Section 1 et seq., and Chapter 22, Article 15, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Jackson County BOE shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Jackson County BOE shall take all measures necessary to stabilize the aforementioned slip that exists on the edge of the property bordering the Kenneth and Connie Thomas property.
3. Within twenty (20) days of the effective date of this Order, Jackson County BOE shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Jackson County BOE will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0115924, Registration No. WVR106264, and Order No. MM-14-04. 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.

4. Because of Jackson County BOE's Legislative Rule and permit violations, Jackson County BOE shall be assessed a civil administrative penalty of eighteen thousand seventy dollars (\$18,070) 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. Jackson County BOE hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21, Chapter 22, Article 12, Section 11, and/or Chapter 22, Article 15, Section 16 of the Code of West Virginia. Under this Order, Jackson County BOE 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, Jackson County BOE 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 Jackson County BOE 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, Jackson County BOE 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 Jackson County BOE becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Jackson County BOE 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 Jackson County BOE 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 Jackson County BOE (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 Jackson County BOE 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 Jackson County BOE 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 Jackson County BOE, its successors and assigns.
7. This Order shall terminate upon Jackson County BOE's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Charles Stephen Wedge, President
Jackson County Board of Education

11-21-13

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date



Open burning on the site (02/11/13)



Petroleum Spill at bulk fuel tank (02/11/13)



Riser pipe not installed at basin (02/11/13)



Inlet to basin not stabilized (02/11/13)



Inlet shown above to basin still is not stabilized (05/10/13)



Additional inlet to basin not stabilized (05/10/13)



Riser pipe at basin is leaking (05/10/13)



Basin sides are not stabilized, material in upper left of photo was dewatered at basin (05/10/13)



Earth berm is missing behind roller (05/10/13)



Concrete washout at roadway adjacent to outlet 2 (05/10/13)



Concrete washout remains in diversion above outlet 2 (05/10/13)



No sump or outlet marker at outlet 2, evidence of sediment laden water leaving site (05/10/13)



Sediment laden water leaving at edge of site, not a permitted outlet (05/10/13)



Petroleum spill in front of bulk fuel tank (05/10/13)



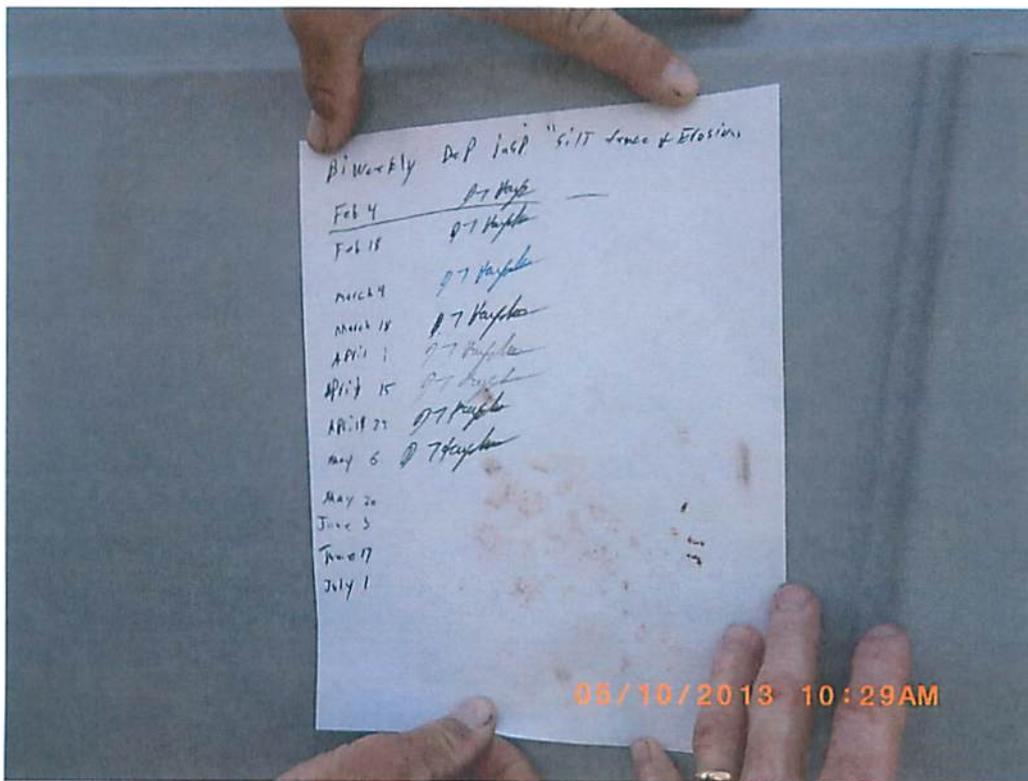
Sediments on roadway from entrance/exit that is not stabilized (05/10/13)



Empty cement bags at mortar mixing location (05/10/13)



Play field area left without stabilization beyond 7 days (05/10/13)



BMP inspection record (05/10/13)



Slip on edge of property (06/24/13)



View down slip to Kenneth Thomas Property (06/24/13)



Erosion rill where material from slip has crossed Thomas Property (06/24/13)



Large quantity of sediments from slip area in tributary of Dudden Fork (06/24/13)

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Jackson County Board of Education Receiving Stream: Tributary of Dudden 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	2e	3a	3b	3c	3e	3f	3g	3i		
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1		
b)	Toxicity of Pollutant	0 to 3	0	1	1	1	0	1	1	1	1	1	1		
c)	Sensitivity of the Environment	0 to 3	0	1	1	1	0	1	1	1	1	1	1		
d)	Length of Time	1 to 3	1	1	1	1	2	2	2	1	1	1	1		
e)	Actual Exposure and Effects thereon	0 to 3	0	1	0	1	0	2	0	1	0	0	0		
Average Potential for Harm Factor			0.4	1	0.8	1	0.6	1.4	1	1	0.8	0.8	0.8	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	1	3	1	1	2	3	2	2	3	1	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.

		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
2a	Minor	Minor	\$400	1	\$400
2b	Minor	Major	\$2,000	1	\$2,000
2c	Minor	Minor	\$800	1	\$800
2e	Minor	Minor	\$1,000	1	\$1,000
3a	Minor	Moderate	\$1,300	1	\$1,300
3b	Moderate	Major	\$4,400	1	\$4,400
3c	Minor	Moderate	\$1,500	1	\$1,500
3e	Minor	Moderate	\$1,500	1	\$1,500
3f	Minor	Major	\$1,900	1	\$1,900
3g	Minor	Minor	\$800	1	\$800
3i	Minor	Minor	\$800	1	\$800
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
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$16,400

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		\$3,280
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			\$0
6.2.b.3 - Cooperation with the Secretary		10	(\$1,640)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$1,670
Penalty =			\$18,070

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:	