



west virginia department of environmental protection

Office of Legal Services
601 57th Street, SE
Charleston, WV 25304
304-926-0460
926-926-0461 Fax

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
dep.wv.gov

October 23, 2012

91 7199 9991 7031 5449 3987

Randy Broda
Jay-Bee Oil & Gas, Inc.
Route 1 Box 5
Cairo WV 26337

Re: Jay-Bee Oil & Gas, Inc.

Mr. Broda:

Enclosed please find the Consent Order reflecting the suggested revision. Please review, sign, and return the Order at your earliest convenience. Upon our receipt of the returned order with your signature, the matter will go to a thirty (30) day public comment period. Pending approval after public comment, the order will be signed by the Director and entered.

If you have questions or concerns, please do not hesitate to contact me.

Sincerely,



Scott Driver
Associate Counsel

Enclosure

cc: Michael Zeto, Chief Inspector (via e-mail)
Jeremy Bandy, Assistant Chief Inspector (via e-mail)
Bradley Swiger, Inspector Supervisor (via e-mail)



west virginia department of environmental protection

Environmental Enforcement
601 57th Street, SE
Charleston, WV 25304
304-926-0470
926-926-0488 Fax

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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: Randy Broda
Jay-Bee Oil & Gas
Route 1 Box 5
Cairo WV 26337

DATE: October 11, 2012

ORDER NO.: MM-13-04

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 Jay-Bee Oil & Gas (hereinafter "Jay-Bee").

FINDINGS OF FACT

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

1. Jay-Bee operates a gas well located in Doddridge County, West Virginia.
2. On May 26, 2012, violations of West Virginia Code, Chapter 22, Article 11, Section 1 et seq., Chapter 22, Article 12, Section 1 et seq., Chapter 22, Article 15, Section 1 et seq., and the rules promulgated theretofore, occurred as follows:
 - a. A Jay-Bee employee sprayed for dust control on Broad Run Road, a public road, using wastewaters from natural gas production. This activity constitutes the contamination of the groundwaters of the State of West Virginia and the disposal of solid waste in a manner endangering the environment and the public health, safety, and welfare. This is a violation of W.

Va. Code §§ 22-12-4(b) and 22-15-10(e) and West Virginia Legislative Rule Title 47, Series 58, Section 7.

b. WVDEP personnel observed and documented an oily sheen in a tributary of Broad Run at or near N 39° 25.0386' and W 80° 39.4188', the result of the discharge of contaminated water from the road spraying activity into the stream causing conditions not allowed. This is a violation of West Virginia Legislative Rule Title 47, Series 2, Section 3.

c. Jay-Bee failed to report the contamination of Broad Run Road to WVDEP's Emergency Notification Spill Hotline. This is a violation of West Virginia Legislative Rule Title 47, Series 11, Section 2.2.a.

d. On May 26, 2012, Jay-Bee did not have analytical information for the material sprayed on Broad Run Road, a violation of WV Legislative Rule Title 47, Series 11, Section 2.2.c. This information was later provided to WVDEP on June 5, 2012, when Jay Bee first received the analysis.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with 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., it is hereby agreed between the parties, and ORDERED by the Director, as follows:

1. Within thirty (30) days of the effective date of this Order, Jay-Bee shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Jay-Bee will take measures to prevent future occurrence. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
WVDEP
2031 Pleasant Valley Road
Fairmont WV 26554**

A copy of this plan shall be submitted to:

**Chief Inspector
Environmental Enforcement – Mail Code #031328
WVDEP
601 57th Street Southeast
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.

2. Because of Jay-Bee's violations, Jay-Bee shall be assessed a civil administrative penalty of forty nine thousand eight hundred fifty three dollars (\$49,853) payable to the West Virginia Department of Environmental Protection for deposit as follows: eight thousand seven hundred dollars (\$8,700.00) for deposit in the Groundwater Remediation Fund, eight thousand

seven hundred dollars (\$8,700.00) for deposit in the Solid Waste Management Fund, and thirty two thousand four hundred fifty three dollars (\$32,453.00) for deposit in the Water Quality Management Fund. Full payment shall be made within ninety (90) days of the effective date of this Order. Jay-Bee may elect to pay this penalty in three consecutive equal monthly payments, with the first such payment due 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 Number and shall be mailed to:**

**Chief Inspector
Environmental Enforcement – Mail Code #031328
WVDEP
601 57th Street Southeast
Charleston WV 25304**

OTHER PROVISIONS

1. Jay-Bee hereby waives its right to appeal this order under the provisions of West Virginia Code, Chapter 22, Article 11, Section 21, and/or Chapter 22, Article 12, Section 11, and/or Chapter 22, Article 15, Section 16. Under this Order, Jay-Bee 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, Jay-Bee 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 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, Jay-Bee 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 Jay-Bee becomes aware of such a delay, notification shall be provided to the Director and Chief Inspector and Jay-Bee shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measure taken and/or to be taken to prevent or minimize the delay, and a timetable by which Jay-Bee 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 Jay-Bee, 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.

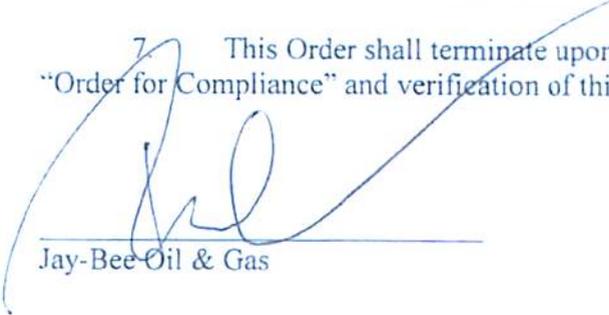
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Jay-Bee of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of

this Order may subject Jay-Bee 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 upon Jay-Bee and its successors and assigns.

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



Jay-Bee Oil & Gas

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date