west virginia department of environmental protection

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

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

June 14, 2013

Kanawha County Board of Education
Charles Wilson
3300 Pennsylvania Ave.
Charleston, WV 25302

CERTIFIED RETURN RECEIPT REQUESTED
91 7199 9991 7032 6245 5587

RE: Violation of Chapter 22, Articles 11and 12 of the WV State Code

Dear Mr. Wilson:

Enclosed is revised CONSENT ORDER NUMBER 7840 dated June 14, 2013. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to Kanawha County Board of Education violating Chapter 22, Articles 11 and 12 of the WV State Code at its facility located in Charleston, Kanawha County, West Virginia. This revision is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,

Michael A. Zeto
Chief Inspector

Enclosure

cc: Scott G. Mandirola, Director, DWWM (via e-mail)
Yogesh Patel, Asst. Director, DWWM/Permits (via e-mail)
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
Laura McGee, Environmental Resources Specialist, EE (via e-mail)
Cynthia Musser, Environmental Inspector Supervisor, EE/WW (via e-mail)
Garland Roberts, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)

RECEIVED
JUN 18 2013
FACILITIES/OPERATIONS

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

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

TO: Kanawha County Board of Education
Charles Wilson
3300 Pennsylvania Ave.
Charleston, WV 25302

DATE: June 14, 2013

ORDER NO.: 7840

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

FINDINGS OF FACT

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

1. Kanawha Co. BOE is conducting land disturbance activity in Charleston, Kanawha County, West Virginia. Kanawha Co. BOE was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR105799, on January 13, 2012.

2. On June 12, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Kanawha Co. BOE's WV/NPDES permit were observed and documented:

   a. 47CSR2 Section 3.2.a - The Permittee caused conditions not allowable in waters of the State by creating distinctly visible settleable solids in the stream.

b. D.1 - The Permittee failed to operate and maintain all erosion control devices.
c. 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.
d. G.4.e.2.C.vi - The Permittee failed to maintain inspection and maintenance records on-site and available for review.
e. G.4.e.2.C.ii - The Permittee failed to make provisions to control fugitive dust.
f. G.4.e.2.C.iii - The Permittee failed to protect groundwater in accordance with WV Legislative Rule 47CSR58 by allowing a petroleum product to flow onto or under the land surface in such a manner that could impact groundwater quality.
g. G.4.d.1.C - The Permittee failed to maintain a clean and orderly project.
h. C.15 - The Permittee failed to post an outlet marker at all permitted outlets from the construction site.
i. G.4.b.5 - The Permittee failed to display a public notice sign near the entrance to the construction site for the duration of the project.
j. G.4.a - The Permittee failed to retain a copy of the Storm Water Pollution Prevention Plan or Groundwater Pollution Prevention Plan on site.

As a result of the aforementioned violations, Notices of Violation (NOV) Nos. I12-20-91-GSR through I12-20-100-GSR were issued to Kanawha Co. BOE.

3. On July 18, 2012, WVDEP personnel issued Order No. 7681 requiring Kanawha Co. BOE to Cease and Desist any and all further land disturbing operations until all documented violations had been abated.

4. On July 20, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, it was observed that the aforementioned problems with erosion and sediment controls were not fully corrected; therefore, Order No. 7681 remained in effect.

5. On July 30, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection it was observed that the violations from the June 12, 2012 inspection were remedied; therefore, Order No. 7681 was terminated.

6. On February 19, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rule and Kanawha Co. BOE's WV/NPDES permit were observed and documented:

a. 47CSR58 Section 4.7.d - The Permittee stored drums containing materials that have the potential to contaminate groundwater in a manner that spills and leaks could not be contained.
b. D.1 - The Permittee failed to operate and maintain all erosion control devices.
c. G.4.e.2.C.iii - The Permittee failed to protect groundwater in accordance with WV Legislative Rule 47CSR58 by allowing a petroleum product to flow onto or under the land surface in such a manner that could impact groundwater quality.
d. G4.e.2.A.ii.c - The Permittee failed to provide inlet and outlet protection for sediment control structures.
e. G.4.e.2.A.ii - The Permittee failed to provide storm drain inlet protection.

f. 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 greater than 0.5 inches of rain per twenty-four (24) hour period.

As a result of the aforementioned violations, NOV Nos. I13-20-44-GSR through I13-20-49-GSR were issued to Kanawha Co. BOE.

7. On June 3, 2013, WVDEP personnel and representatives of Kanawha Co. 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. and Chapter 22, Article 12, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Kanawha Co. 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. Within twenty (20) days of the effective date of this Order, Kanawha Co. BOE shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Kanawha Co. 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. WVR105799, and Order No. 7840. 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. Because of Kanawha Co. BOE's Legislative Rule and permit violations, Kanawha Co. BOE shall be assessed a civil administrative penalty of thirteen thousand four hundred

five dollars ($13,405) 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. Kanawha Co. BOE hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia. Under this Order, Kanawha Co. 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, Kanawha Co. 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 Kanawha Co. 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, Kanawha Co. 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 Kanawha Co. BOE becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Kanawha Co. 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 Kanawha Co. 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 Kanawha Co. 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 Kanawha Co. 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 Kanawha Co. 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 Kanawha Co. BOE, its successors and assigns.

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

Charles Wilson
Kanawha County Board of Education

6/19/2013
Date

Public Notice begin:

Date

Public Notice end:

Date

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

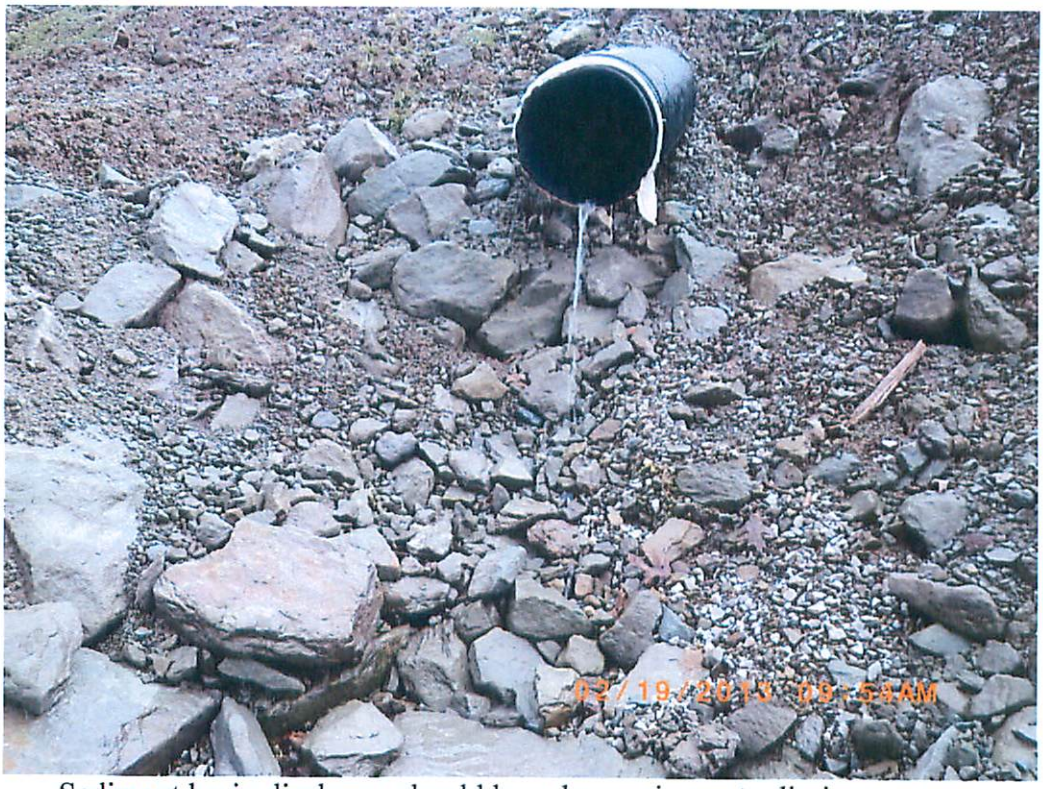
Date

revised January 2013

RECEIVED
JUL 15 2013
ENVIRONMENTAL
ENFORCEMENT

Kanawha County BOE- Edgewood Elementary
WVR105799
02-19-13

Example of petroleum leaked below equipment



Sediment basin discharge should have larger rip rap to dissipate energy

Kanawha County BOE- Edgewood Elementary
WVR105799
02-19-13

Section of silt fence needs replaced

Logs are not an approved BMP to replace rock check dams

Kanawha County BOE- Edgewood Elementary
WVR105799
02-19-13

Outlet from diversion at building pad lacks rock check dam shown in plan

Water exiting at location near building pad where diversion berms should be in place

Kanawha County BOE- Edgewood Elementary
WVR105799
02-19-13

Antifreeze drum without proper secondary containment

Solid waste are being burned on the site

Kanawha County BOE- Edgewood Elementary
WVR105799
02-19-13

Embankments of sediment basin are not stabilized

Outfall 1 to sediment basin lacks rip rap protection as per plan

Kanawha County BOE- Edgewood Elementary
WVR105799
02-19-13

Topsoil stockpile is at risk of flowing down this to water of the State

Silt fence below topsoil stockpile is allowing sediments to leave site

Kanawha County BOE- Edgewood Elementary
WVR105799
02-19-13

Groin ditch and rock checks are not in place adjacent to topsoil stockpile

Problems with silt fence below missing groin ditch and rock checks

Kanawha County BOE- Edgewood Elementary
WVR105799
02-19-13

Opening in silt fence and sediments below in stream from site

Temporary drop inlet protection is not in place

Kanawha County BOE- Edgewood Elementary
WVR105799
02-19-13

Sediments inside drop inlet

Silt fence at toe of fill slope needs repaired
(Note: Inspection records from 02/18/13 state silt fence in good condition)

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Kanawha County Board of Education **Receiving Stream:** Magazine Branch

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**	**6b**	**6c**	**6d**	**6e**	**6f**								
a)	Amount of Pollutant Released	1 to 3	2	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	2	1	1	0								
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	0								
d)	Length of Time	1 to 3	1	1	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1								
	Average Potential for Harm Factor		1.2	1.2	1	1	0.6	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3	2	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.

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
6b	Moderate	Moderate	$3,200	1	$3,200
6c	Moderate	Moderate	$3,200	1	$3,200
6d	Minor	Moderate	$1,500	1	$1,500
6e	Minor	Moderate	$1,500	1	$1,500
6f	Minor	Moderate	$1,300	1	$1,300
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					$10,700

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 -	10		$1,070
6.2.b.4 - Compliance/noncompliance history	25		$2,675
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	($1,070)
6.2.b.5 - Ability to Pay			$0
Penalty Adjustments			**$2,705**
Penalty =			**$13,405**

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: