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: Logan County Commission
Bill Wooten Sports Complex
300 Stratton Street
Logan, WV 25601

DATE: January 6, 2012

ORDER NO.: 7530

## 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 Logan County Commission (hereinafter "Logan CC").

## FINDINGS OF FACT

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

1. Logan CC operates a construction site located near McConnell, Logan County, West Virginia. On April 5, 2011, WVDEP issued Order No. 7229 to Logan CC requiring it to apply for a WV/NPDES permit for the construction activity. Logan CC was issued WV/NPDES Water Pollution Control Permit No. WV0115924, General Permit Registration No. WVR105515 on July 29, 2011.

2. On July 13, 2011, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violation of WV Legislative Rule was observed and documented:

   a. 33CSR1-7.1.a- Created or operated an open dump.

   As a result of the aforementioned violation, NOV No. D11-23-080-MBC was issued to the Logan CC.

3. On August 3, 2011, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violation of the terms and conditions of its WV/NPDES permit was observed and documented:

   a. G.4.b.5- Failed to display a public notice sign near the entrance to the construction site for the duration of the project.

   As a result of the aforementioned violation, NOV No. I11-23-004-JCC was issued to the Logan CC.

4. On October 27, 2011, 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 its WV/NPDES permit were observed and documented:

   a. G.4.e.2.A.ii.j- Allowed sediment-laden water to leave the site without going through an appropriate device.
   b. D.1- Failed to operate and maintain all erosion control devices.
   c. G.4.e.2.C.i- Created or allowed an open dump on the permitted site, as referenced in WV Legislative Rule 33CSR1-7.1.a.
   d. G.4.b.5- Failed to display a public notice sign near the entrance to the contruction site for the duration of the project.
   e. 47CSR2-3.2.a- Created or contributed to Conditions Not Allowable in State Waters by causing or allowing distinctly visible settleable solids in the stream.

   As a result of the aforementioned violations, Notice of Violation (NOV) Nos. I11-23-110-MBC, I11-23-111-MBC, I11-23-112-MBC, I11-23-113-MBC, and I11-23-114-MBC were issued to Logan CC.

## 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. Logan CC 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 thirty (30) days of the effective date of this Order, Logan CC shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Logan CC will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. 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 Logan CC's Legislative Rule and permit violations, Logan CC shall be assessed a civil administrative penalty of twelve thousand five hundred ten dollars ($12,510) 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. Logan CC 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, Logan CC 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, Logan CC 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 Logan CC 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, Logan CC 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

Logan CC 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 Logan CC 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 Logan CC (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 Logan CC 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 Logan CC 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 Logan CC, its successors and assigns.

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

Rocky Adkins

Bill Wooten Sports Complex
Logan County Commission

12-17-2013

Date

Signed on 6-27-2013

Public Notice begin:

Date

Public Notice end:

Date

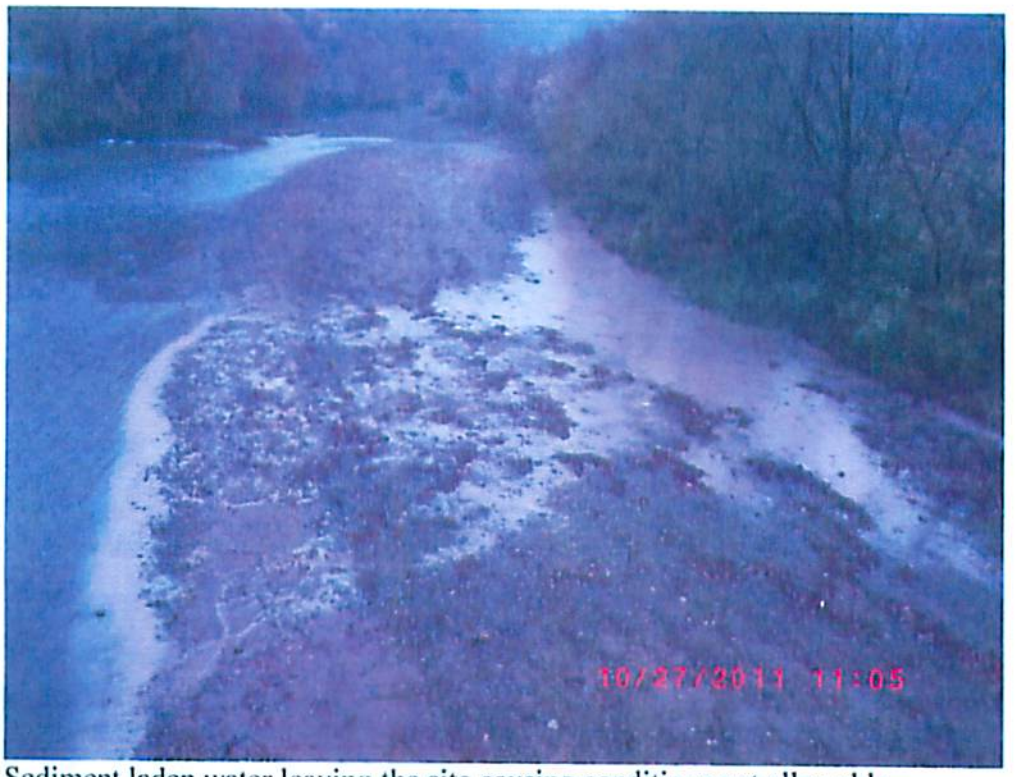
Scott G. Mandirola, Director
Division of Water and Waste Management

Date

*revised September 2011*

Open dump observed at the site.

Sediment laden water leaving the site




Sediment laden water leaving the site causing conditions not allowable

Solids in the receiving stream.

Water flowing across improperly maintained silt fence

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:** Logan County Commission **Receiving Stream:** Guyandotte River

**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# 3a | 4a | 4b | 4c | 4d | 4e | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| a) | Amount of Pollutant Released | 1 to 3 | 1 | 1 | 1 | 1 | 1 | 2 | | | | | | | |
| b) | Toxicity of Pollutant | 0 to 3 | 0 | 1 | 1 | 1 | 0 | 1 | | | | | | | |
| c) | Sensitivity of the Environment | 0 to 3 | 0 | 1 | 1 | 1 | 0 | 1 | | | | | | | |
| d) | Length of Time | 1 to 3 | 1 | 1 | 1 | 2 | 2 | 1 | | | | | | | |
| e) | Actual Exposure and Effects thereon | 0 to 3 | 0 | 1 | 1 | 1 | 0 | 1 | | | | | | | |
| | **Average Potential for Harm Factor** | | 0.4 | 1 | 1 | 1.2 | 0.6 | 1.2 | No | No | No | No | No | No | No |
| 2) | **Extent of Deviation Factor** | **Factor Range** | | | | | | | | | | | | | |
| | Degree of Non-Compliance | 1 to 3 | 1 | 2 | 2 | 2 | 1 | 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 |
|---|---|---|---|---|---|
| 3a | Minor | Minor | $400 | 1 | $400 |
| 4a | Minor | Moderate | $1,500 | 1 | $1,500 |
| 4b | Minor | Moderate | $1,500 | 1 | $1,500 |
| 4c | Moderate | Moderate | $3,200 | 1 | $3,200 |
| 4d | Minor | Minor | $600 | 1 | $600 |
| 4e | Moderate | Moderate | $3,200 | 1 | $3,200 |
| 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 |
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| 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** | | | | | $10,400 |

# 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 - | 10 | | $1,040 |
| 6.2.b.4 - Compliance/noncompliance history | 10 | | $1,040 |
| 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 | | | $0 |
| 6.2.b.5 - Ability to Pay | | | $0 |
| **Penalty Adjustments** | | | **$2,110** |
| **Penalty =** | | | **$12,510** |

| 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:** | |