



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: Laney Directional Drilling Co.
Attn: T.J. Strickland, General Manager
PO Box 1449
Humble, TX 77347

DATE: February 3, 2012

ORDER NO.: 7438

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 Laney Directional Drilling Co. (hereinafter "LDDC").

FINDINGS OF FACT

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

1. LDDC operates a directional drilling operation located near Frametown, Braxton County, West Virginia.
2. On June 1, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel responded to a complaint in the Frametown area. The complainant indicated that the Elk River was running very muddy and may be due to some drilling activity in the area. After investigation, it was determined that LDDC was doing a directional bore under the Elk River associated with an Oil and Gas pipeline installation project, which was part of a 60 mile pipeline project. While drilling, LDDC experienced a "frac out" in an intermittent stream which discharged drilling mud into the stream and into the nearby Elk River. As a result of this investigation, the following violations of WV Legislative Rules were observed and documented:

- a. Title 47, Series 2, Section 47-2-3.f., Conditions Not Allowable In State Waters-by the discharging of industrial wastes from a drilling operation in a manner that created distinctly visible color in the Elk River, Braxton County, WV.
- b. Title 47, Series 2, Section 47-2-3.b., Conditions Not Allowable In State Waters-by the discharging of industrial wastes from a drilling operation resulting in deposits or sludge beds on the bottom of the Elk River, Braxton County, WV.

As a result of the aforementioned violations, Notice of Violation (NOV) No. I11-04-110611-2-JKL was issued to LDDC.

3. On June 3, 2011 and June 7, 2011, WVDEP conducted follow-up inspections to monitor cleanup progress for the spill site. During these inspections, it was observed and documented that cleanup efforts were ongoing. WVDEP personnel documented the existence of the deposits or sludge beds from the frac out from June 1 through June 7, 2011.
4. On June 17, 2011, WVDEP personnel followed up on a spill notification from the LDDC drilling operation, which indicated that LDDC had experienced the “frac out” once again. After investigation, it was determined that drilling mud had entered the intermittent stream from several different locations within the same general area and then flowed into the Elk River at the same location as noted on June 1, 2011. As a result of this investigation, the following violations of WV Legislative Rules were observed and documented:
 - a. Title 47, Series 2, Section 47-2-3.f., Conditions Not Allowable In State Waters-by the discharging of industrial wastes from a drilling operation in a manner that created distinctly visible color in unnamed tributary of the Elk River, Braxton County, WV.
 - b. Title 47, series 2, Section 47-2-3.b., Conditions Not Allowable In State Waters-by the discharging of industrial wastes from a drilling operation resulting in deposits or sludge beds on the bottom of an unnamed tributary of the Elk River and the Elk River, Braxton County, WV.

As a result of the aforementioned violations, NOV No. I11-04-0617-GCM was issued to LDDC.

5. On November 17, 2011, WVDEP personnel and a representative of LDDC met to discuss the terms and conditions of this Order. During the meeting, it was agreed that clean-up of the aforementioned spills had been completed to the satisfaction of WVDEP personnel.
6. On December 29, 2011, LDDC provided additional information relating to the violations contained within 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. LDDC shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of LDDC's Legislative Rule violations, LDDC shall be assessed a civil administrative penalty of eleven thousand two hundred thirty dollars (\$11,230) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry 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. LDDC 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, LDDC 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, LDDC 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 LDDC 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, LDDC 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 LDDC 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 LDDC 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 LDDC (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 LDDC 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 LDDC 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 LDDC, its successors and assigns.
7. This Order shall terminate upon LDDC's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



T.J. Strickland, General Manager
Laney Directional Drilling Co.

2/20/2012

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Laney Directional Drilling Company Receiving Stream: unnamed tributary to Elk River, Elk River

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#													
			2.a.	2.b.	4.a.	4.b.										
a)	Amount of Pollutant Released	1 to 3	1	1	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1	1	1										
d)	Length of Time	1 to 3	1	1	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1										
Average Potential for Harm Factor			1	1	1	1	No									
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	1	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.

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 -			\$0
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		10	(\$1,400)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,400)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$2,770)
Penalty =			\$11,230

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:	