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west virginia department of environmental protection

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Earl Ray Tomblin, Governor  
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**CONSENT ORDER  
ISSUED UNDER THE  
WATER POLLUTION CONTROL ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: C. Corwin Bromley, General Counsel      DATE: February 5, 2013  
MarkWest Liberty Midstream  
& Resources L.L.C.  
1515 Arapahoe Street  
Tower 1, Suite 1600      ORDER NO.: 7699  
Denver, CO 80202-2137

**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 MarkWest Liberty Midstream & Resources L.L.C. (hereinafter "MarkWest").

**FINDINGS OF FACT**

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

1. MarkWest operates an oil and gas construction site associated with the Mobley Gas Plant located near Mobley, Wetzel County, West Virginia. The Company acquired the site in February, 2011, at which time its evaluations for construction of natural gas processing plants and associated equipment began. MarkWest was issued WV/NPDES Water Pollution Control Permit No. WV0115924 on December 9, 2011.
2. MarkWest represents that, during the period from February to September 2011, the following events occurred:
  - a. During February to March 2011, consultation with the United States Fish and Wildlife Service (USFWS) ensued concerning the federally-listed endangered

Promoting a healthy environment.

- Indiana bat, resulting in a conclusion that clearing of trees must occur before March 31, 2011.
- b. During April to July 2011, engineering assessments identified an undocumented historical slip creating unacceptable instabilities. It was determined that a Nationwide 39 permit would be required from the United States Army Corps of Engineers (USACOE) to infill a portion of an unnamed tributary (UT) of North Fork Fishing Creek along the west side of the site.
  - c. During July 2011, MarkWest submitted a permit application to USACOE and West Virginia Division of Natural Resources (WVDNR) Office of Land and Streams (OLS) for filling approximately 700 linear feet of the western UT.
  - d. During September 2011, stability conditions at the site continued to warrant further revision. An individual 404 Permit application was submitted to address the approximate 2,100 linear feet of fill to UTs on the western side. The engineered fill was designed to be integrally incorporated into the cut and fill activities at the site.
  - e. During September 2011, MarkWest observed multiple signs of slope instability on the western side of the site. Consistent with the Erosion and Sediment (E and S) plan for the site, the company worked to manage silt fence and Best Management Practice (BMP) installation using hand work and equipment where possible. Adjustments to BMPs included addition of perimeter controls and hydro-seeding.
3. On October 31, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel inspected the MarkWest Mobley Gas Plant site. During the visit, violations of the following sections of WV Legislative Rules were observed and documented:
- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site. North Fork of Fishing Creek is designated as a High Quality Stream (Sixth Edition, prepared by the West Virginia Division of Natural Resources).
  - b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

WVDEP also determined that MarkWest had applied for but had not obtained a permit from the USACOE to discharge dredged and/or fill material into Waters of the United States.

4. On November 9, 2011, WVDEP personnel visited the facility. During the visit, violations of the following sections of WV Legislative Rules were observed and documented:
- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
  - b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the visit, WVDEP personnel also determined the following:

- MarkWest conducted clearing and grubbing operations to facilitate the construction of a natural gas processing plant.
  - A large portion of exposed soils on the western slope of the site was discharged into a UT of North Fork of Fishing Creek and caused a large deposit of silt, mud, trees, and other detritus.
  - MarkWest did not report or make immediate notification to WVDEP of the discharge likely to have adverse effects upon the quality of the waters and impair existing or future uses of that water.
  - MarkWest did not construct adequate erosion and sediment control structures recognized as prudent and necessary to prevent, control, and reduce sediment into State waters.
5. On November 15, 2011, e-mail correspondence to WVDEP from MarkWest indicated that earthmoving activities at the Mobley Gas Plant had ceased, and a restoration plan would be implemented. USFWS seasonal tree clearing restrictions ended on March 31, 2011, resulting in increased regulatory ability of MarkWest to engage in additional mitigation from landslides.
6. On November 18, 2011, MarkWest was issued Order No. 7488 by WVDEP. MarkWest was ordered to cease and desist any and all further land disturbing operations until all previously documented violations had been abated, and a WV/NPDES construction stormwater permit had been obtained.
7. On November 21, 2011, WVDEP personnel visited the facility. During the visit, violations of the following sections of WV Legislative Rules were observed and documented:
- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
  - b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the visit, WVDEP personnel also determined the following:

- MarkWest had ceased additional land disturbance activities at the facility.
- MarkWest had installed silt fence along the eastern slope; however, the integrity and effectiveness of the installation was not determined. A soil stabilizer had also been applied to the lower eastern slope.
- MarkWest was recovering and relocating unstable soils on the eastern slope.
- No activity was occurring on the western slope, the area remained unstable and the unauthorized fill continued to exist in the UT.
- Muddy water was leaving the site and caused a distinctly visible plume in North Fork of Fishing Creek.

8. On November 22, 2011, WVDEP received correspondence from MarkWest via e-mail detailing additional site-specific, supplemental information submitted with the USACOE permit application. The information included names of adjacent property owners, drawings and details of proposed stream impacts, alternative analysis, and mitigation costs.
9. On December 9, 2011, WVDEP notified MarkWest via e-mail of the approval of WV/NPDES General Water Pollution Control Permit No. WV0115924, Registration No. WVR105854.
10. On December 20, 2011, WVDEP received a proposed revised E and S Control Plan for the Mobley Gas Plant from MarkWest. The proposal included a construction schedule and Stream Restoration Plan, which documented the following:
  - A three phase construction sequence for remediation and project completion would be implemented.
  - All proposed E and S controls would be installed in accordance with the submitted plans and WVDEP's "West Virginia Erosion and Sediment Control Best Management Practice (BMP) Manual."
  - Exposed soils not subject to construction traffic, including stockpiled materials, would, at no time, remain unseeded or without mulch covering for more than twenty-one (21) days.
  - Standing water in work areas or trenches would be pumped through geotextile filter bags to facilitate dewatering of the work areas.
  - Phase 3 would include lower stream remediation below the proposed fill disposal area to North Fork of Fishing Creek. Mitigation of the remaining portion of UNT-4 from the valley fill key to North Fork of Fishing Creek would start upstream.
11. On December 31, 2011, WVDEP was notified by MarkWest that a slip had occurred on the eastern slope of the project area, and WVDEP personnel were dispatched to evaluate the situation. During the visit, WVDEP personnel documented the following:
  - The slip was approximately 800' long, 15' deep, and 25' wide.
  - The slip contained several logs of mature timber from previously conducted clearing operations on the site.
  - A small logjam contained the slip material, filling in a UT of North Fork of Fishing Creek.
  - The slip was approximately 1000' from North Fork of Fishing Creek.
  - MarkWest created two (2) sediment traps in the UT of North Fork of Fishing Creek. These devices were constructed of hay bales and chain link fencing and were ineffective.
  - MarkWest was waiting on a permit from USACOE to install an 8" corrugated pipe that would allow for the flow of two smaller tributaries while constructing a valley fill.

12. On January 2, 2012, WVDEP personnel, along with MarkWest personnel, met at the facility to assess the state of the project site. During the visit, WVDEP documented the following:
- Mud, logs, and other detritus had migrated several hundred feet downstream from its previous location (as documented on November 9, 2011).
  - The migration of material was impeded at a narrow portion of the hollow, and the material had concentrated to form a dam/logjam in the stream channel of approximately 8-10 feet in height.
  - Some water was observed flowing through the logjam, although a significant amount was being impounded, resulting in a discharge volume that was significantly less than the total volume generated.
  - The volume of settleable and suspended solids being introduced into North Fork of Fishing Creek from the project site had greatly increased as compared with previous observations.
  - Access to the logjam was extremely difficult with steep slopes, slip-prone areas, and no improved access system, resulting in potential safety hazards for project workers.
13. On January 4, 2012, WVDEP personnel visited the facility. During the visit, violations of the following sections of WV Legislative Rules were observed and documented:
- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
  - b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the visit, WVDEP personnel also determined the following:

- The slip material in the western UT of North Fork of Fishing Creek had not appreciably moved further downstream from its previous location (as documented on January 2, 2012).
- Sediment-laden water originating in the vicinity of the slip material continued to enter North Fork of Fishing Creek.
- A representative from MarkWest stated that a tentative plan was underway to mitigate the environmental impact generated by the slip, but a definitive plan of remediation had not yet been determined.
- The proposed tentative plan of mitigation included a “pump-around” method to divert water around the logjam in an attempt to dry out the material prior to excavation. The plan also included passing the diverted water through a filter bag upslope to remove any sediment prior to reintroduction into North Fork of Fishing Creek.
- The in-stream sediment traps constructed by MarkWest on December 31, 2011 had been repaired.

14. On January 4, 2012, MarkWest submitted to WVDEP via e-mail a document entitled "Mobley Emergency Stream Restoration Plan." The purpose of this plan was to supplement the previously submitted Stream Restoration Plan, received by WVDEP on December 20, 2011. Documented within this plan were the following proposals:
  - Install a rock check dam "high up in the valley at the point where two forks of the UT converge," approximately 200' upstream of the logjam.
  - Install a siphon hose (incorrect reference to the WVDEP BMP manual by MarkWest) above the rock check dam to divert water around the logjam created on December 31, 2011.
  
15. On January 6, 2012, WVDEP personnel visited the facility. During the visit, violations of the following sections of WV Legislative Rules were observed and documented:
  - a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
  - b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the visit, WVDEP personnel also determined the following:

- Sediment-laden water originating in the vicinity of the slip material continued to enter North Fork of Fishing Creek.
  - Several hay bales from the in-stream sediment traps had failed and were introduced to a UT of North Fork of Fishing Creek.
  - The hay bales had been replaced, but the failed hay bales had not been recovered from the UT.
  - The logjam did not appear to have advanced downstream appreciably, although the height at the toe of the logjam appeared to have decreased.
  - Several slope measurements of the affected hollow were taken, and it was determined that slopes ranged from approximately 55% to 75%.
  - Wet conditions led to several ephemeral drainage areas entering into the slip material and logjam.
  - The temporary access road was under construction, and logs and brush were being burned on-site. It was confirmed that a burning permit had been obtained from the West Virginia Division of Forestry.
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16. On January 11, 2012, WVDEP received correspondence via e-mail from MarkWest concerning updates to the submitted E and S control plan. Documented in the correspondence was the following:
    - Work on the temporary access road was continuing, with the addition of a "by-pass ditch" upslope of the road to aid in diverting water.
    - "1000' of SDR-35, 8" diam. gasketed pipe" had been received and would serve as a bypass structure.

- Installation of rock check dams and the “monument” downstream of the logjam had been completed.

17. On January 12, 2012, WVDEP received correspondence via e-mail from MarkWest regarding the project site. Documented within the correspondence was the following:

- A new slip had occurred on the eastern slope of the project site.
- The western UT was experiencing high flow.
- A MarkWest inspector would be on-site with a satellite phone and an “emergency call down list.” The inspector would remain on-site all night, monitoring the situation every hour.
- A track-hoe would be delivered to the area near the EQT well pad, and an operator and inspector would be standing by until the site was stabilized.

18. On January 13, 2012, WVDEP personnel were dispatched to evaluate the situation. During the visit, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
- d. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the visit, WVDEP personnel also determined the following:

- The slip on the eastern slope was approximately 50-60’ in width, and approximately 300’ in height.
- Temporary E and S controls were being installed.
- Conditions not allowable were observed in two of the three UTs of North Fork of Fishing Creek on the eastern side of the project site.
- According to MarkWest personnel, permanent E and S measures for the eastern slope were to be formulated.
- According to MarkWest personnel, 24-hour surveillance was planned solely for the slip on the western slope and was not to include the newly formed slip on the eastern slope.
- According to MarkWest personnel, a new access road would need to be constructed on the eastern slope to facilitate slope stabilization.
- MarkWest personnel were advised to submit a Plan of Corrective Action by the end of the day.

19. On January 17, 2012, WVDEP personnel visited the facility. During the visit, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.f.- Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- c. 47CSR2 Section 3.2.a.- Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
- d. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the visit, WVDEP personnel also determined the following:

- In-stream sediment traps on the western UT were failing or had already failed.
- The downstream check dam on the western UT was filled to capacity and in need of maintenance.
- The upstream check dam on the western UT had begun to fail.
- Multiple intermittent streams flowing across the pre-existing well access road (in use by MarkWest personnel) were introducing additional sediment to the logjam on the western side of the project area.
- Silt fence installed on January 13, 2012 below the slip on the eastern slope had been overrun.
- The sediment migration pathway was observed to extend from within the project area into various UTs of North Fork of Fishing Creek.
- Suspended and settleable sediment, as well as vegetative debris, was leaving the project site at high velocity.

20. On January 19, 2012, WVDEP personnel visited the western side of the facility. During the visit, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
- b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the visit, WVDEP personnel also determined the following:

- Maintenance was being conducted on in-stream E and S BMPs.
- Vehicle access to rock check dams on the UT of North Fork of Fishing Creek had been established to facilitate sediment removal. Stream buffer had not been established.

- The UT of North Fork of Fishing Creek was being crossed between the two in-stream sediment traps without utilizing a culvert.
  - A high volume of water and sediment from the UT was being introduced to North Fork of Fishing Creek.
  - The toe of the logjam on the western side of the project area appeared to be increasing in height, with the individual pieces shifting in position.
  - Piping for water diversion had been installed around the slip material, but was not functioning properly.
  - The temporary access road was still in the process of construction.
  - Burning of cleared timber was ongoing.
  - Vehicles and equipment were crossing North Fork of Fishing Creek without bank stabilization, temporary low water bridge, or other approved crossing method.
  - A WV/NPDES permit modification (WVR105854-A) had been applied for to increase acreage from 80 acres to 81 acres to account for a gravel parking lot.
21. On January 19, 2012, WVDEP notified MarkWest via e-mail that Modification No. 1 of the existing WV/NPDES General Permit Registration No. WVR105854 had been approved.
22. On January 19, 2012, in response to the Order for Compliance issued by WVDEP on November 18, 2011, WVDEP received correspondence from MarkWest regarding the previously-submitted Stream Restoration Plan.

Documented within the correspondence were the following:

- Immediate removal of fallen timber from the upper reaches of the UT of North Fork of Fishing Creek would begin, necessitating clearing in advance of a temporary access road.
  - Immediate removal of in-stream sediment retention devices from the UT would begin, and maintenance of aforementioned devices would ensue.
  - Sediment removal from the upper reaches of the UT of North Fork of Fishing Creek would begin, pending approval by WVDEP.
  - Sediment removal from the lower reaches (below the planned limit of the engineered fill) would commence upon completion of plant site construction, which was anticipated to occur in April 2012.
  - Sediment removal from the lower reaches would be accomplished manually and stream flow would be diverted using a “dam and pump” method to allow for work to be performed “in the dry.”
23. On January 21, 2012, WVDEP received correspondence from MarkWest via e-mail regarding the USACOE permit.

Documented within the correspondence was the following:

- MarkWest crews were working along the eastern side of the site.

- MarkWest committed to revising the “restoration report” per advisement from WVDEP.
- USACOE requested the pipelines connecting the Mobley Gas Plant and EQT’s Mobley Compressor Station be submitted in an Individual Permit in order to include potential environmental impacts.
- Upon subsequent conversations between USACOE and MarkWest, MarkWest was advised to proceed under Nationwide Permit 12 for the pipelines.

24. On January 23, 2012, WVDEP received correspondence from MarkWest via e-mail regarding the stream impacts of the project site.

Documented within the correspondence were the following:

- MarkWest would submit a revised E and S plan for the site by the close of business on January 24, 2012.
- Upon completion of the revised E and S plan, MarkWest would amend the Stream Restoration Plan submitted on January 4, 2012.
- Access roads to the slip material were being constructed on both the eastern and western sides of the project area.

25. On January 23, 2012, WVDEP personnel visited the facility. During the visit, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
- d. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the visit, WVDEP personnel also determined the following:

- MarkWest’s Environmental Inspector (EI) was on-site, and a review of his daily inspection logs, photo logs, and maintenance logs was conducted. The records were determined to be in order and up to date. EI inspections were conducted once a week or after each rain event.
- No work was being conducted, because the EI determined conditions were too hazardous.
- A large volume of sediment-laden water was causing conditions not allowable in the western UT of North Fork of Fishing Creek.
- Some sediment cleared from the in-stream E and S BMPs was being stored in the area cleared for the low water bridge across North Fork.

- New stone was added to the stream channel across North Fork below the outlet of the western UT of North Fork of Fishing Creek.
- The parking lot added in Modification No. 1 of WV/NPDES Permit No. WVR105854 was being constructed.
- A burn pile containing root wads, brush, and other woody debris was observed.
- A small area of the stream bank of North Fork had collapsed adjacent to the project site.
- The slip on the eastern side of the project area was observed to be moving, and it contained timber, root wads, and large rocks.
- There were three (3) existing access roads that lead to the bottom of the slip area.
- A small excavator was being staged on one of the access roads for emergency response purposes.
- The slip on the eastern side of the project area had broken through silt fence areas which had not, at the time of the site visit, been repaired.
- A plan of corrective action for the slip on the eastern side of the project area had not been developed.

26. On January 24, 2012, WVDEP received correspondence from MarkWest regarding proposed site stabilization plans at the Mobley Gas Plant.

Documented within the correspondence were the following:

- MarkWest employees observed the landslide on the eastern side of the project area “on January 18, 2012 and noted that the landslide extended upslope to near the existing ridgeline.”
- MarkWest determined that the slip should be repaired by removing soil from the upper portion of the mass and working from the top down to reconstruct the failed area.
- MarkWest determined that work could not be completed at that time due to:
  1. On-site unavailability of storage for wastage of excavated material until remediation of the western stream and preparation for fill placement.
  2. Inclement weather conditions that drastically complicated earthwork operations.
- Upon commencement of remediation work, MarkWest planned to install additional E and S controls.
- MarkWest stated that the temporary access road would be used to enter the stream valley to facilitate stream restoration efforts that would repair damage caused by the slip and debris on the western side of the project area.
- MarkWest proposed to divert surface water and groundwater seeps upslope from the temporary access road, rather than utilize culvert pipes.

- MarkWest stated that site stabilization and stream cleanup would be difficult and involve a significant amount of time to complete, but completion of the temporary access road and initialization of stream restoration would begin as soon as possible.

27. On January 25, 2012, WVDEP personnel visited the facility. During the visit, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
- d. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the visit, WVDEP personnel also determined the following:

- E and S controls had been repaired and/or restored near the outlet of the western UT of North Fork of Fishing Creek.
- Activity associated with the eastern and western slip continued to contribute to conditions not allowable.
- Super silt fence had been installed near the original headwaters of the eastern UTs below the project site clearing limits.
- Disturbed access roads extended from ridgeline operations to the lower portions of the slip.

28. On February 1, 2012, WVDEP personnel visited the facility. During the visit, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
- d. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the visit, WVDEP personnel also determined the following:

- Ongoing construction of the temporary access road involved no less than five pieces of heavy equipment, whereas maintenance and repair of in-stream BMPs was being carried out by hand.
  - Maintenance was needed on all in-stream E and S BMPs.
  - Corrugated drain pipe installed by MarkWest to divert water around the western logjam was, instead, discharging on top of the logjam approximately 20' upslope from the toe of the logjam.
  - Large amounts of sediment had been deposited in the streambed of the eastern UT of North Fork of Fishing Creek from the slip area to its outlet at North Fork of Fishing Creek.
  - A logjam had developed in the eastern UT of North Fork of Fishing Creek.
  - Super silt fence installed below the eastern slip had been overrun and had not been repaired.
  - Sediment was continually being introduced to the eastern UT from the project site, even in the absence of precipitation.
29. On February 2, 2012, MarkWest received the proposed Individual Section 404 Permit from USACOE based on the application submitted in July and revised in September 2011.
30. On February 3, 2012, WVDEP personnel visited the facility. During the visit, violations of the following sections of WV Legislative Rules were observed and documented:
- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
  - b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
  - c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
  - d. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the visit, WVDEP personnel also determined the following:

- E and S controls on the western UT were in need of repair.
- A high volume of sediment was being introduced into North Fork of Fishing Creek from both the western slip and the creek fording.
- The dewatering structure near the outlet of the western UT was in good condition and functioning as intended.
- The dewatering structure near the permanent bridge location showed signs of failure, and sediment was escaping from the structure toward the North Fork of Fishing Creek.
- The temporary access road had not yet been completed.
- A large amount of sediment, trees, and other debris was in the eastern UT of North Fork of Fishing Creek.

- A sediment blanket was observed downstream of the eastern slip.
- A sediment plume was visible for the entire length of the eastern UT, and no controls to mitigate the flow of sediment leaving the project site were observed.

31. On February 7, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
- d. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the inspection, WVDEP personnel also determined the following:

- Silt fence was overrun and poorly maintained on both the eastern and western slips.
- Diversions had not been stabilized prior to becoming functional and had not been maintained.
- Serious erosion and soil slippage had occurred in both the eastern and western UTs.
- E and S controls were not observed on the western side of the project area on the pre-existing shallow well access road that MarkWest had been using.
- E and S controls were not observed on the temporary access roads beneath the eastern slip.
- Ditch check dams were not properly installed or maintained throughout the site.
- Logs and other vegetative debris from clearing operations were carried off site and into both the eastern and western UTs of North Fork of Fishing Creek.
- UTs had been filled in and used as access to temporary fill storage areas on the western side of the project area and to a super silt fence installation on the eastern side of the project area.
- North Fork was being crossed via a fording method, as opposed to the approved bridge or culvert crossing methods.
- MarkWest was advised that the USACOE permit would need to be revised to incorporate the eastern UT disturbance.
- MarkWest was advised to begin discussion and planning for mitigation in both the eastern and western UTs.

32. On February 14, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
- d. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the inspection, WVDEP personnel also determined the following:

- Silt fence was overrun and poorly maintained on both the eastern and western slips.
- Diversions had not been stabilized prior to becoming functional and had not been maintained.
- Serious erosion and soil slippage had occurred in both the eastern and western UTs.
- E and S controls were not observed on the western side of the project area on the pre-existing shallow well access road that MarkWest had been using.
- E and S controls were not observed on the temporary access roads beneath the eastern slip.
- Ditch check dams were not properly installed or maintained throughout the site.
- Logs and other vegetative debris from clearing operations were carried off site and into both the eastern and western UTs of North Fork of Fishing Creek.
- UTs had been filled in and used as access to temporary fill storage areas on the western side of the project area and to a super silt fence installation on the eastern side of the project area.
- Temporary drainage structures (corrugated flexible and rigid pipes) did not have E and S controls installed at outlets.
- MarkWest was advised that the USACOE permit would need to be revised to incorporate the eastern UT disturbance.
- MarkWest was advised to begin discussion and planning for mitigation in both the eastern and western UTs.
- Installation of silt fence at the modified fill storage area was incomplete.
- The access road to the modified fill storage area exhibited incomplete installation of silt fence and no installation of diversion ditches, culvert pipes, or other E and S BMPs.

- MarkWest was advised to submit a phased timetable for operations relating to remediation of the western slip material to WVDEP as soon as possible.

33. On February 23, 2012, WVDEP personnel visited the facility. During the visit, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.

During the visit, WVDEP personnel also determined the following:

- A stream culvert crossing had been installed on North Fork of Fishing Creek.
- A large amount of sediment was being introduced into North Fork of Fishing Creek from the western UT.
- Curlex matting, used for in-stream E and S control maintenance, had been installed along the temporary road.
- A filter device installed at the outlet of the rigid diversion pipe had failed, causing a large amount of sediment to flow downstream.
- An earthen dam had been created at the back of the slip to capture water and divert it around the slip area, which had not been lined with geotextile, rock or other stabilizing materials.
- Timber was being burned on-site.
- An access road to the upstream portion of the slip material had been excavated.
- An additional layer of super silt fence had been installed below the eastern slip.

34. On February 29, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.

- d. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the inspection, WVDEP personnel also determined the following:

- Silt fence was overrun and poorly maintained on both the eastern and western slips.
- Diversions had not been stabilized prior to becoming functional and had not been maintained.
- Serious erosion and soil slippage had occurred in both the eastern and western UTs.
- E and S controls were not observed on the western side of the project area on the pre-existing shallow well access road that MarkWest had been using.
- E and S controls were not observed on the temporary access roads beneath the eastern slip.
- Ditch check dams were not properly installed or maintained throughout the site.
- Logs and other vegetative debris from clearing operations were carried off site and into both the eastern and western UTs of North Fork of Fishing Creek.
- UTs had been filled in and used as access to temporary fill storage areas on the western side of the project area and to a super silt fence installation on the eastern side of the project area.
- Temporary drainage structures (corrugated flexible and rigid pipes) did not have E and S controls installed at outlets.
- MarkWest advised that the USACOE permit would need to be revised to incorporate the eastern UT disturbance.
- MarkWest was advised to begin discussion and planning for mitigation in both the eastern and western UTs.
- Installation of silt fence at the modified fill storage area was incomplete.
- The access road to the modified fill storage area exhibited incomplete installation of silt fence and no installation of diversion ditches, culvert pipes, or other E and S BMPs.
- MarkWest was advised to submit a phased timetable for operations relating to remediation of the western slip material to WVDEP as soon as possible.
- Poor site maintenance and housekeeping were observed adjacent to the permanent bridge installation area, as evidenced by miscellaneous super silt fence materials scattered over the embankment below CR-15.

35. On March 3, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
- d. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the inspection, WVDEP personnel also determined the following:

- Silt fence was inadequate, although repairs and/or replacement was ongoing on the eastern side of the project site.
- Diversions had not been stabilized prior to becoming functional and had not been maintained.
- Diversions for the temporary access road had not been established.
- Drainage diversions for the western tributary were not functional.
- Ditch checks had not been installed on the western side of the temporary access road.
- The toe of the valley fill had been partially constructed to an approximate height of 40,' and the slope had not been stabilized.
- The western side of the project site had not been stabilized.
- The slip area on the eastern slope had been partially stabilized with Flexterra.
- Adequate E and S BMPs had not been established for either the eastern or western side of the project site.
- Both the eastern and western slips remained intact and continued to introduce sediment to North Fork of Fishing Creek.
- An E and S control plan had not been established for impacted areas of the project site.
- MarkWest was advised that a detailed Plan of Corrective Action and time table for the project site should be submitted to WVDEP for approval.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W-NW-TAM-030812-002 and W-NW-TAM-030812-003 were issued to MarkWest.

36. On March 14, 2012, WVDEP received correspondence from MarkWest via e-mail regarding the proposed plan for remediation and restoration of the eastern slip and impacted UTs.

Documented within the correspondence were the following:

- MarkWest proposed to stabilize the hillside with Flexterra until the proposed valley fill on the western side of the project site was ready to

accept the soil (approximately 45-55 days from the date of communication).

- MarkWest proposed to subcontract another company expressly to carry out environmental work, including the installation of E and S controls.
- MarkWest proposed to remediate the headwater areas of the eastern UTs using “small equipment.”

37. On March 15, 2012, WVDEP personnel documented the following violations of WV Legislative Rules:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
- d. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

As a result of the aforementioned violations, NOV Nos. NW-BCS-031512-001 and No. NW-BCS-031512-002 were issued to MarkWest.

38. On March 19, 2012, WVDEP notified MarkWest via e-mail of additional technical corrections required in order to initiate approval for the pending WV/NPDES Permit Modification No. WV105854-B. MarkWest was advised that approval for General Permit coverage had to be obtained prior to construction.

39. On March 22, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
- d. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the inspection, WVDEP personnel also determined the following:

- Silt fence was overrun and poorly maintained on both the eastern and western slips.

- Diversions had not been stabilized prior to becoming functional and had not been maintained.
- Serious erosion and soil slippage had occurred in both the eastern and western UTs.
- E and S controls were not observed on the western side of the project area on the pre-existing shallow well access road that MarkWest had been using.
- E and S controls were not observed on the temporary access roads beneath the eastern slip.
- Ditch check dams were not properly installed or maintained throughout the site.
- Logs and other vegetative debris from clearing operations were carried off site and into both the eastern and western UTs of North Fork of Fishing Creek.
- UTs had been filled in and used as access to temporary fill storage areas on the western side of the project area and to a super silt fence installation on the eastern side of the project area.
- Temporary drainage structures (corrugated flexible and rigid pipes) did not have E and S controls installed at outlets.
- MarkWest advised that the USACOE permit would need to be revised to incorporate the eastern UT disturbance.
- Installation of silt fence at the access road to the modified fill storage area was incomplete, and there was no installation of diversion ditches, culvert pipes, or other E and S BMPs.
- MarkWest was advised to submit a phased timetable for operations relating to remediation of the western slip material to WVDEP as soon as possible.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W-NW-JGT-032212-001 and W-NW-JGT-032212-002 were issued to MarkWest.

40. On March 22, 2012, MarkWest submitted drawings to WVDEP depicting proposed stream restoration measures for the eastern UT. MarkWest continued placing slip material from the upper reaches of the western UT in the engineered fill, installed/maintained BMPs, performed monitoring of the log jam, and performed in-stream remedial measures for sediment control in the western UT.
41. On March 29, 2012, WVDEP notified MarkWest via e-mail regarding the required Plan of Corrective Action for the project site.

Documented within the correspondence were the following:

- Originally due on March 22, 2012, WVDEP agreed to an extension of the due date of the Plan of Corrective Action.
- Included photos illustrated that maintenance of appropriate E and S controls were not adequate and/or not performed.

42. On March 29, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.
- d. 47CSR2 Section 3.2.f.-Distinctly visible color in a UT of North Fork of Fishing Creek on the western side of the project site.

During the inspection, WVDEP personnel also determined the following:

- Silt fence was overrun and poorly maintained on both the eastern and western slips.
- Diversions had not been stabilized prior to becoming functional and had not been maintained.
- Serious erosion and soil slippage had occurred in both the eastern and western UTs.
- E and S controls were not observed on the western side of the project area on the pre-existing shallow well access road that MarkWest had been using.
- E and S controls were not observed on the temporary access roads beneath the eastern slip.
- Ditch check dams were not properly installed or maintained throughout the site.
- Logs and other vegetative debris from clearing operations were carried off site and into both the eastern and western UTs of North Fork of Fishing Creek.
- UTs had been filled in and used as access to temporary fill storage areas on the western side of the project area and to a super silt fence installation on the eastern side of the project area.
- Temporary drainage structures (corrugated flexible and rigid pipes) did not have E and S controls installed at outlets.
- MarkWest was advised that the USACOE permit would need to be revised to incorporate the eastern UT disturbance.
- Installation of silt fence at the access road to the modified fill storage area was incomplete, and there was no installation of diversion ditches, culvert pipes, or other E and S BMPs.
- MarkWest was advised to submit a complete Plan of Corrective Action to WVDEP as soon as possible.

As a result of the aforementioned violations, NOV Nos. W-NW-JGT--032912-001 and W-NW-JGT--032912-002 were issued to MarkWest.

43. On April 2, 2012, WVDEP notified MarkWest via e-mail that WVDEP personnel intended to visit the Mobley Gas Plant site the following day. Additionally, WVDEP requested an update of the status of the Plan of Corrective Action, because a submittal date had not been received.
44. On April 3, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:
  - a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.

As a result of the aforementioned violation, NOV No. W-NW-TAM-040312-001 was issued to MarkWest.

45. On April 3, 2012, WVDEP received a document from MarkWest entitled "East Side Stream Restoration Plan."

Outlined within the document were the following:

- MarkWest gave a brief summary of the timeline of events at the Mobley Gas Plant to date.
  - MarkWest proposed two options for stream remediation of the eastern UT of North Fork of Fishing Creek and included a timetable for benchmarks to be completed at the project site.
46. On April 4, 2012, WVDEP notified MarkWest via certified mail that the "East Side Stream Restoration Plan," submitted on April 3, 2012, was denied for the following reasons:
    - The plan only addressed stream remediation for the eastern UT of North Fork of Fishing Creek, whereas WVDEP sought a Plan of Corrective Action for the entire site.
    - On page four (4) of the Plan, MarkWest reflected that "stream restoration of the western UT was completed to the toe of the engineered fill on March 14, 2012." WVDEP contends, however, that the western UT has not been restored, mitigated, or rehabilitated to pre-existing conditions.
    - On page four (4) of the Plan, MarkWest reflected that "no production earthwork had been performed, rather only stream restoration and preparation of engineered fill placement had been performed." WVDEP contends, however, that production earthwork has been performed. Activities perceived by WVDEP as promoting rapid site development include, but are not limited to, south entrance clearance, north entrance placement, and powerline right-of-way development.

- WVDEP contends that stream conditions below the engineered fill on the western UT remain substantially impaired and unrestored.
- WVDEP documented numerous occasions when MarkWest activity continued to contribute sediment and settleable solids into North Fork of Fishing Creek and its UTs near the Mobley Gas Plant site.
- On page four (4) of the plan, MarkWest reflected that “the engineered fill precludes access to the western UT from the south,” whereas the E and S Control Plan submitted on December 20, 2011 stated that mitigation of the portion of the stream below the valley fill key would begin from the upstream direction.
- WVDEP clearly conveyed its request for a clear and concise submittal of activities, sequence of events, and deadlines for certain activities.
- WVDEP contends the Plan did not specify application rates of seed by type and the accompanying deadlines for completion and definitions of alternative actions for poor germination.
- WVDEP contends that the site-wide E and S controls proposed in coordination with the WV/NPDES permit modification were not incorporated into the Plan.
- WVDEP contends that the proposed resolution to amend the USACOE permit for the east UT was not incorporated into the Plan.
- WVDEP contends that the proposed scope of work for the eastern UT is substantially undersized. Specifically, the ephemeral tributaries impacted with sediments were not noted within the submitted drawings, and the Plan failed to recognize the entire linear impact area.
- WVDEP contends that the placement of Pumps No. 1 and No. 2 (per drawing SP13-1) is below the impacted areas of the eastern UTs and would allow additional sediment to be dispersed downstream. The plan should have articulated a strategy to eliminate further sediment contribution to the UTs.
- On page six (6) of the plan, MarkWest proposed to use a “mini excavator and Marooka tracked dump truck...to mechanically remove the rocks and sediment from the stream,” but failed to include an explanation of how further stream disruptions would be avoided if this method was utilized.
- On page seven (7) of the Plan, MarkWest proposed to use hydraulic methods to “flush” sediment into a dam structure, then transport it via hose to a filter bag. The Plan, however, failed to include details including, but not limited to, the type of hose or pipe that would be utilized, the method by which the pipe would be anchored, and an explanation of how further scouring and deterioration of the affected stream channel would be avoided when “power washing.”
- WVDEP disagreed with MarkWest’s claim on page five (5) that fine-grain sediment poses no substantive risk to aquatic organisms or habitats.

WVDEP requested that corrections and/or clarifications to the new Plan of Corrective Action be submitted on or before April 16, 2012.

47. On April 11, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.

During the inspection, WVDEP personnel also determined the following:

- Silt fence was overrun and poorly maintained on both the eastern and western slips.
- Diversions had not been stabilized prior to becoming functional and had not been maintained.
- Serious erosion and soil slippage had occurred in both the eastern and western UTs.
- E and S controls were not observed on the western side of the project area on the pre-existing shallow well access road that MarkWest had been using.
- E and S controls were not observed on the temporary access roads beneath the eastern slip.
- Ditch check dams were not properly installed or maintained throughout the site.
- Logs and other vegetative debris from clearing operations were carried off site and into both the eastern and western UTs of North Fork of Fishing Creek.
- UTs had been filled in and used as access to temporary fill storage areas on the western side of the project area and to a super silt fence installation on the eastern side of the project area.
- Temporary drainage structures (corrugated flexible and rigid pipes) did not have E and S controls installed at outlets.
- MarkWest was advised that the USACOE permit would need to be revised to incorporate the eastern UT disturbance.
- Installation of silt fence at the access road to the modified fill storage area was incomplete, and there was no installation of diversion ditches, culvert pipes, or other E and S BMPs.
- MarkWest was advised to submit a complete Plan of Corrective Action to WVDEP as soon as possible.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W-NW-JGT--041112-001 and W-NW-JGT--041112-002 were issued to MarkWest.

48. On April 19, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.

During the inspection, WVDEP personnel also determined the following:

- Silt fence was overrun and poorly maintained on both the eastern and western slips.
- Diversions had not been stabilized prior to becoming functional and had not been maintained.
- Serious erosion and soil slippage had occurred in both the eastern and western UTs.
- E and S controls were not observed on the western side of the project area on the pre-existing shallow well access road that MarkWest had been using.
- E and S controls were not observed on the temporary access roads beneath the eastern slip.
- Ditch check dams were not properly installed or maintained throughout the site.
- Logs and other vegetative debris from clearing operations were carried off site and into both the eastern and western UTs of North Fork of Fishing Creek.
- UTs had been filled in and used as access to temporary fill storage areas on the western side of the project area and to a super silt fence installation on the eastern side of the project area.
- Temporary drainage structures (corrugated flexible and rigid pipes) did not have E and S controls installed at outlets.
- MarkWest was advised that the USACOE permit would need to be revised to incorporate the eastern UT disturbance.
- Installation of silt fence at the access road to the modified fill storage area was incomplete, and there was no installation of diversion ditches, culvert pipes, or other E and S BMPs.
- Heavy equipment entered the streambed of the western UT to reach the logjam below the valley fill, in violation of the WV/NPDES permit.
- MarkWest was advised to submit a complete Plan of Corrective Action to WVDEP as soon as possible.

As a result of the aforementioned violations, NOV Nos. W-NW-JGT--041912-001 and W-NW-JGT--041912-002 were issued to MarkWest.

49. On April 23, 2012, WVDEP personnel received a Supplemental Site Wide Restoration Plan from MarkWest.

50. On April 25, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the eastern side of the project site.
- b. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of North Fork of Fishing Creek on the western side of the project site.

During the inspection, WVDEP personnel also determined the following:

- Silt fence was overrun and poorly maintained on both the eastern and western slips.
- Diversions had not been stabilized prior to becoming functional and had not been maintained.
- Serious erosion and soil slippage had occurred in both the eastern and western UTs.
- E and S controls were not observed on the western side of the project area on the pre-existing shallow well access road that MarkWest had been using.
- E and S controls were not observed on the temporary access roads beneath the eastern slip.
- Ditch check dams were not properly installed or maintained throughout the site.
- Logs and other vegetative debris from clearing operations were carried off site and into both the eastern and western UTs of North Fork of Fishing Creek.
- UTs had been filled in and used as access to temporary fill storage areas on the western side of the project area and to a super silt fence installation on the eastern side of the project area.
- Temporary drainage structures (corrugated flexible and rigid pipes) did not have E and S controls installed at outlets.
- MarkWest was advised that the USACOE permit would need to be revised to incorporate the eastern UT disturbance.
- Installation of silt fence at the access road to the modified fill storage area was incomplete, and there was no installation of diversion ditches, culvert pipes, or other E and S BMPs.
- Heavy equipment entered the streambed of the western UT to reach the logjam below the valley fill, in violation of the WV/NPDES permit.
- MarkWest was advised to submit a complete Plan of Corrective Action to WVDEP as soon as possible.

As a result of the aforementioned violations, NOV Nos. W-NW-JGT-042512-001 and W-NW-JGT-042512-002 were issued to MarkWest.

51. On May 1, 2012, WVDEP personnel visited the facility to ascertain MarkWest's compliance with the WV/NPDES Permit modification.

During the visit, WVDEP personnel determined the following:

- The limits of disturbance recorded in previous WV/NPDES permit submittals had been underreported.
- E and S controls previously submitted by MarkWest were insufficient for the scope of the project and needed to be increased.
- Construction sequences listed in the Storm Water Pollution Prevention Plan (SWPPP) and plan sheets were not the same.
- Details were missing from the previous submittal regarding erosion control matting in the valley fill area.

52. On May 4, 2012, WVDEP personnel visited the facility with WVDNR personnel to ascertain current and potential future stream impacts associated with the Mobley Gas Plant.

During the visit, WVDEP and WVDNR personnel determined the following:

- The western UT (listed on Permit Modification No. WV105854 as "Stream 4") should be considered as impacted for its entire length.
- Remediation should not be considered until additional sedimentation can be prevented.
- Use of the channel as a transportation corridor to access the logjam, while not recommended, is currently of lesser importance due to the damage already done to the stream.
- WVDNR personnel agreed to provide oversight on a MarkWest Stream Restoration Plan.

53. On May 22, 2012, WVDEP personnel conducted an inspection from Mobley Gas Plant to Fort Beeler Compressor Station Pipeline. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in West Virginia Fork of Fish Creek.
- b. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of Rocky Run.
- c. 47CSR2 Section 3.2.f.-Distinctly visible color in Rocky Run.

During the inspection, WVDEP personnel also determined the following:

- Access roads associated with the pipeline had culvert crossings which were of insufficient capacity to handle bank-full flow.

- Insufficient bank stabilization was observed at the pipeline stream crossing at or near GPS coordinates N 39° 43.087' W 80° 34.222,' and sediment was observed to have entered West Virginia Fork of Fish Creek.
- Trench breakers were the only E and S BMPs installed on the right of way.
- Drainage sumps were in need of maintenance along the access road.
- A UT of Rocky Run had been filled in with sediment.
- A timber mat crossing was installed at or near GPS coordinates N 39° 42.482' W 80° 34.775,' contributing to conditions not allowable in Rocky Run.
- An outdoor municipal waste area was staged near Rocky Run.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W-NW-TAM-052212-001, W-NW-TAM-052212-002, and W-NW-TAM-052212-003 were issued to Mark West.

54. On May 24, 2012, WVDEP personnel conducted an inspection of the Mobley Gas Plant facility.

During the inspection, WVDEP personnel determined the following:

- The north access road was missing water bars, diversion ditches on the up-slope side of the roadway, rock check dams and sumps.
- Super silt fence was installed on the roadway segment parallel to North Fork.
- The south access road was missing water bars, diversion ditches on the up-slope side of the roadway, rock check dams and sumps.
- The east side slope was missing polymer-enhanced sediment retention barriers at the base of the original clearing limit.
- Logs and other vegetative debris from clearing operations were removed from the western UT of North Fork of Fishing Creek.
- Sediment, logs, and other vegetative debris remained in the eastern UT of North Fork of Fishing Creek.

55. On June 6, 2012, WVDEP personnel conducted an inspection of the Mobley Gas Plant facility.

During the inspection, WVDEP personnel determined the following:

- The north access road was missing water bars, diversion ditches on the up-slope side of the roadway, rock check dams and sumps.
- The roadway segment parallel to North Fork had super silt fence installed.
- The south access road was missing water bars, diversion ditches on the up-slope side of the roadway, rock check dams and sumps.
- The east side slope was missing polymer-enhanced sediment retention barriers at the base of the original clearing limit.

- Logs and other vegetative debris from clearing operations were removed from the western UT of North Fork of Fishing Creek.
- Sediment, logs, and other vegetative debris remained in the eastern UT of North Fork of Fishing Creek
- The polymer-enhanced sediment retention barrier at the toe of valley fill was incomplete. On-site personnel advised WVDEP that it would be completed upon approval and commencement of the Stream Restoration Plan

56. On June 7, 2012, WVDEP and WVDNR personnel conducted a meeting with MarkWest to discuss the pending Stream Restoration Plan.

During the meeting, the following were determined:

- Subcontractors for MarkWest would provide a reference-based analysis from the surrounding area, allowing WVDNR personnel to review the reference selection.
- The total length of the currently existing western UT and impacted portions of the eastern UT must be restored to pre-impact conditions.
- MarkWest suggested an assay of benthic community.
- MarkWest was advised that the valley fill permit issued by the USACOE would likely contain stream data pertinent to the restoration effort.
- MarkWest proposed to conduct the restoration during the summer months.
- MarkWest anticipated a minimum of thirty (30) days for the western UT restoration and forty-five (45) to sixty (60) days for the eastern UT restoration.
- The Plan was to be submitted for review by June 15, 2012, with approval, if applicable, to be provided by July 15, 2012.

57. On June 18, 2012, WVDEP personnel conducted an inspection of the Mobley Gas Plant facility.

During the inspection, WVDEP personnel determined the following:

- The north access road was missing water bars, diversion ditches on the up-slope side of the roadway, rock check dams and sumps.
- The roadway segment parallel to North Fork had super silt fence installed.
- The south access road was missing water bars, diversion ditches on the up-slope side of the roadway, rock check dams and sumps.
- The east side slope was missing polymer-enhanced sediment retention barriers at the base of the original clearing limit.
- Logs and other vegetative debris from clearing operations were removed from the western UT of North Fork of Fishing Creek.
- Sediment, logs, and other vegetative debris remained in the eastern UT of North Fork of Fishing Creek.

58. On July 25, 2012, WVDEP personnel conducted an inspection of a Mark West pipeline being constructed by Carl Smith in the vicinity of Miletus, Doddridge County, West Virginia. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:

- a. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of Buckeye Creek of Fishing Creek at or near GPS coordinates 39° 14.3998' N, 80° 34.4748' W.
- b. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of Big Isaac Creek at or near GPS coordinates 39° 13.5661' N, 80° 34.1424' W.
- c. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in a UT of Turtletree Fork at or near GPS coordinates 39° 13.2015' N, 80° 33.0762' W.
- d. 47CSR2 Section 3.2.a.-Distinctly visible floating, suspended, and/or settleable solids in Meathouse Fork at or near GPS coordinates 39° 12.1389' N, 80° 32.1824' W.

During the inspection, WVDEP personnel also determined the following:

- Erosion and sediment controls were marginally maintained throughout the project.
- Slope stabilization had not yet been attempted at any of the inspected areas.
- Stockpile areas along the Right-Of-Way were not stabilized.
- Access roads were observed to have minimal E and S BMPs installed.
- Slope breakers and perimeter E and S BMPs were observed to be installed and functioning properly.

As a result of the aforementioned violations, NOV Nos. W-NW-JGT-072512-001, W-NW-JGT-072512-002, W-NW-JGT-072512-003, and W-NW-JGT-072512-004 were issued to Mark West.

59. On October 4, 2012, WVDEP personnel received a revised Post Construction Management Report from Mark West.
60. On October 17, 2012, WVDEP personnel received correspondence from Mark West concerning the violations discussed in Draft Consent Order No. 7699. In the letter, Mark West represented that it encountered extraordinary circumstances and unique challenges in terms of environmental management at the site.
61. On October 18, 2012, WVDEP personnel and representatives of Mark West met to discuss the terms and conditions of this Order.
62. On November 2, 2012, WVDEP personnel received a revised Stream Restoration Plan from Mark West.

63. On January 3, 2013, WVDEP personnel determined that the proposed Stream Restoration Plan, received on November 2, 2012, was under review by WVDNR and had not yet been approved. Removal of the remaining sediment from the lower portion of the western UT will be accomplished by MarkWest upon approval of the proposed Stream Restoration Plan.

### **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. MarkWest 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 forty-five (45) days of the effective date of this Order, MarkWest shall submit for approval a proposed stream restoration plan and proposed plan of corrective action and schedule, outlining action items and completion dates for how and when MarkWest will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The stream restoration plan and plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
NW Regional Environmental Enforcement Office  
2031 Pleasant Valley Road  
Fairmont, WV 26554**

A copy of the plans shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

Upon approval, the stream restoration plan and 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 stream restoration plan and plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of MarkWest's Legislative Rule violations, MarkWest shall be assessed a civil administrative penalty of three hundred six thousand two hundred ten dollars (\$306,210) 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

**OTHER PROVISIONS**

1. MarkWest 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, MarkWest 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, MarkWest 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 MarkWest 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, MarkWest 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 MarkWest 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 MarkWest 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 MarkWest (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 MarkWest 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 MarkWest 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 MarkWest, its successors and assigns.
7. This Order shall terminate upon MarkWest's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



MarkWest Liberty Midstream & Resources, L.L.C.

C. Corwin Bromley  
Senior Vice President, General Counsel and Secretary

Public Notice begin:

Public Notice end:

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

*revised September 2011*

2.11.2013

Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**RECEIVED**

FEB 12 2013

ENVIRONMENTAL  
ENFORCEMENT

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

MarkWest

Receiving Stream:

N.Fk. Fishing Creek

Treatment System Design Maximum Flow:

NA

MGD

Treatment System Actual Average Flow:

NA

MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#		
			3a,4a,7a,13a,15a,18c,19c,20a,25c,27c,28c,30c,31c,32c,33c,34c,35c,37c,39c,42c,44a,47b,48b,50b	18a,19a,25a,27a,28a,30a,31a,32a,33a,34a,35a,37a,39a,42a,47a,48a,50a	3b,4b,7b,13b,15b,18d,19d,20b,25d,27d,28d,30d,31d,32d,34d,35d,37d,39d,42d
a)	Amount of Pollutant Released	1 to 3	2	2	2
b)	Toxicity of Pollutant	0 to 3	1	1	1
c)	Sensitivity of the Environment	0 to 3	2	2	2
d)	Length of Time	1 to 3	1	1	1
e)	Actual Exposure and Effects thereon	0 to 3	2	2	2
<b>Average Potential for Harm Factor</b>			1.6	1.6	1.6
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>			
	Degree of Non-Compliance	1 to 3	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#			
			18b,19b,25b,27b,28b,30b,31b,32b,33b,34b,35b,37b,39b,42b	53a, 53b, 53c	58a, 58b, 58c, 58d	
a)	Amount of Pollutant Released	1 to 3	2	2	2	
b)	Toxicity of Pollutant	0 to 3	1	1	1	
c)	Sensitivity of the Environment	0 to 3	2	2	2	
d)	Length of Time	1 to 3	1	1	1	
e)	Actual Exposure and Effects thereon	0 to 3	2	2	2	
<b>Average Potential for Harm Factor</b>			1.6	1.6	1.6	No
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>				
	Degree of Non-Compliance	1 to 3	2	2	2	

		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,4a,7a,13a,15	Moderate	Moderate	\$3,600	24	\$86,400
18a,19a,25a,27	Moderate	Moderate	\$3,600	17	\$61,200
3b,4b,7b,13b,15b,18d,19d,20b	Moderate	Moderate	\$3,600	19	\$68,400
18b,19b,25b,27b,28b,30b,31b,53a, 53b, 53c	Moderate	Moderate	\$3,600	14	\$50,400
58a, 58b, 58c, 58d	Moderate	Moderate	\$3,600	3	\$10,800
0	FALSE	FALSE	FALSE	4	\$14,400
				1	\$0
<b>Total Base Penalty</b>					<b>\$291,600</b>

## 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-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

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 -	5		\$14,580
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits -			\$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 -			\$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
<b>Penalty Adjustments</b>			<b>\$14,610</b>
<b>Penalty =</b>			<b>\$306,210</b>

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	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b>	