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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

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

TO: Michels Pipeline Construction  
Attn: David A. Melum PG  
PO Box 128  
817 West Main Street  
Brownsville, WI 53006

DATE: January 28, 2013

ORDER NO.: 7762

**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 Michels Pipeline Construction (hereinafter "Michels").

**FINDINGS OF FACT**

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

1. Michels operates an equipment and supply storage yard, known as Michels Equipment Yard, associated with Antero Pipeline construction activities. Michels Equipment Yard is located at Ritchie Business Park near Lumberton, Ritchie County, West Virginia. Ritchie Business Park, of which Michels is a tenant, is owned by Mr. Ronald Lane.
2. On September 12, 2012, by written agreement between Ronald Lane and Michels, Ronald Lane agreed to accept dirt generated by the construction of the Antero Pipeline, HDD MUD.
3. On October 19, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of Michels Equipment Yard. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:

- a. 47CSR2 Section 3.2a-Michels caused or contributed to conditions not allowable in State waters by creating distinctly visible settleable solids in the stream. Specifically, sodium bentonite slurry (drilling mud) was trucked to and deposited within a permeable pit constructed at the Michels Equipment Yard. The drilling mud had been used to stabilize the sides of the borehole and provide lubrication where a string of pipe was pulled through. The excess waste drilling mud was improperly disposed of within the unlined constructed pit, allowing it to run off site and become deposited in an unnamed tributary of Stewart Run.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W-NW-TWH-101912-003 was issued to Michels.

4. On October 19, 2012, Michels began efforts to remove the drilling mud from State waters.
5. On October 24, 2012, Michels completed removal of drilling mud from State waters.
6. On January 22, 2013 a meeting was held between WVDEP and Michels to discuss the terms and conditions of this Order.

### **ORDER FOR COMPLIANCE**

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Michels shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, Michels shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Michels will achieve compliance with all pertinent laws and rules. The 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 this plan 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 plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Michels shall immediately cease and refrain from future storage, deposition or placement of drilling mud off-site or away from active drilling operations.
4. Michels shall immediately begin reusing, recycling, or lawfully disposing of all drilling mud at a permitted municipal landfill.
5. Because of Michels' WV Legislative Rule violation, Michels shall be assessed a civil administrative penalty of three thousand eight hundred ten dollars (\$3,810) 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. Michels 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, Michels 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, Michels 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 Michels 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, Michels 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 Michels 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 Michels 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 Michels (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 Michels 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 Michels 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 Michels, its successors and assigns.
7. This Order shall terminate upon Michels' notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

*David A. Melum*

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David A. Melum, PG  
Michels Pipeline Construction

*02/05/2013*

\_\_\_\_\_  
Date

Public Notice begin:

**RECEIVED**

\_\_\_\_\_  
Date

Public Notice end:

FEB 7 2013

ENVIRONMENTAL  
ENFORCEMENT

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date



Drilling mud disposed of on site



Drilling mud disposed of on site



Pond where the impacted State waters drain



Impacted State waters exiting pipe under Rt. 50 and entering pond



Impacted State waters exiting pipe under Rt. 50 and entering pond



State waters heavily impacted by the drill mud material near the area of the pond

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Michels Pipeline Construction Receiving Stream: Unnamed Tributary of Stewart Run

Treatment System Design Maximum Flow: N/A MGD

Treatment System Actual Average Flow: N/A MGD (if known)

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

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

**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 47CSRI-6.2)

### Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase  
 6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

**Size of Violator: 0 - 50% decrease**

**NOTE:** This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

**Additional Other factors to be determined for increases or decreases on a case-by-case basis.**

**Public Notice Costs (cost for newspaper advertisement)**

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

## Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$420
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	(\$420)
6.2.b.3 - Cooperation with the Secretary		10	(\$420)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>(\$390)</b>
<b>Penalty =</b>			<b>\$3,810</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>	