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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  
Phone: (304) 926-0495  
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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: Greg Hicks  
Mountain V. Oil & Gas, Inc.  
P.O. Box 470  
Bridgeport WV 26330

DATE: August 15, 2012

ORDER NO.: 7819

**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. Mountain V. Oil & Gas, Inc. (hereinafter, "Mountain V").

**FINDINGS OF FACT**

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

1. In connection with oil and gas exploration activities in the Alton area of Upshur County, WV, an independent contractor on behalf of Mountain V constructed a freshwater impoundment identified as Farnsworth Stockert #1H Pit (also known as Farnsworth Stockert Freshwater Impoundment) near the headwaters of an unnamed tributary of Queens Fork of Laurel Fork of French Creek of the Buckhannon River.
2. On July 14, 2011, WVDEP personnel conducted a complaint investigation of muddy water near Alton, Upshur County, WV. The following violations were observed and documented:
  - a. Mountain V's independent contractor's construction activities at Farnsworth Stockert #1H Pit caused a distinctly visible plume of settleable or floatable solids in State waters by allowing untreated sediment laden stormwater to enter an unnamed tributary of Queens Fork, causing a violation of WV Legislative Rule 47CSR2 Section 3.2. Notice of Violation (NOV) NW-SW-I-071411-01 dated July 14, 2011 was issued to Mountain V by WVDEP.

Promoting a healthy environment.

- b. The Farnsworth Stockert #1H Pit construction activity paralleled an unnamed tributary of Queens Fork, however, sediment and erosion control devices were not in place to prevent sediment from entering the stream.
  - c. Mountain V represents that subsequent to the WVDEP's inspection, measures were promptly taken by its contractor to replace or otherwise install additional sediment control measures to control stormwater from the site.
3. On October 18, 2011, certified correspondence from the US Department of the Army, Pittsburgh District, Corps of Engineers (USACOE) notified Greg Hicks, a representative of Mountain V, that unlawful filling of streams without a permit had been observed at the Farnsworth Stockert Freshwater Impoundment, and this activity was referred to the US Environmental Protection Agency (USEPA) for follow up enforcement action.

### **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. Mountain V shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Following notification from USEPA and/or USACOE that construction activity is necessary as a result of activities described in Findings of Fact No. 3 of this Order, Mountain V shall within thirty (30) days of such notification make application to WVDEP for a WV/NPDES Water Pollution Control Permit for Stormwater Associated with Construction Activities for all new or not yet completed construction activities at the Farnsworth Stockert Freshwater Impoundment location. Termination of this Order shall not relieve Mountain V from securing WV/NPDES Permits for all future activities at the Farnsworth Stockert Freshwater Impoundment through the expiration of the current WV/NPDES general permit, or until replaced by a successor permit requirement pursuant to West Virginia law.
3. No new construction activities in any additional areas of the site, including grubbing operations, shall begin until the Permit has been issued or authorized by WVDEP.
4. In addition to obtaining a valid WV/NPDES Permit as set forth in paragraph 2 of the Order for Compliance herein, Mountain V agrees to provide to WVDEP copies of any other permits that it has obtained relating to the protection of water quality at the Farnsworth Stockert Freshwater Impoundment site.
5. Within thirty (30) days of entry of this Order, Mountain V shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Mountain V will achieve compliance with all pertinent laws and rules related to the Farnsworth Stockert Freshwater Impoundment site. The plan of corrective action shall be submitted to:

**Environmental Inspector Supervisor  
NW Regional Environmental Enforcement Office  
2031 Pleasant Valley Road, Suite #1  
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.

6. Because of Mountain V's Legislative Rule violations, Mountain V shall be assessed a civil administrative penalty of four thousand four hundred thirty dollars (\$4,430) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

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

**OTHER PROVISIONS**

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

  
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Greg Hicks  
Mountain V. Oil and Gas, Inc.

8/22/2012  
\_\_\_\_\_  
Date

Public Notice begin: \_\_\_\_\_  
Date

Public Notice end: \_\_\_\_\_  
Date

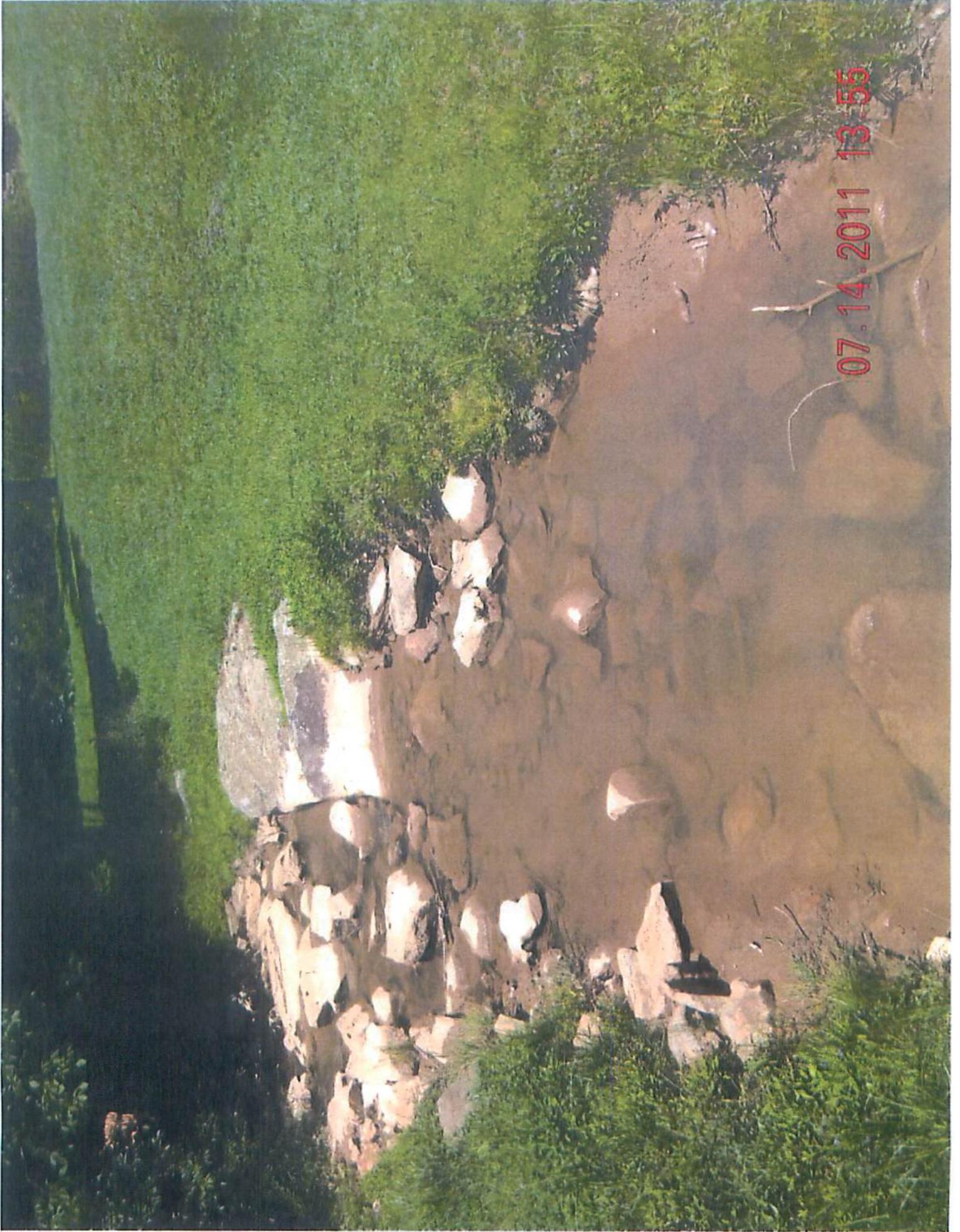
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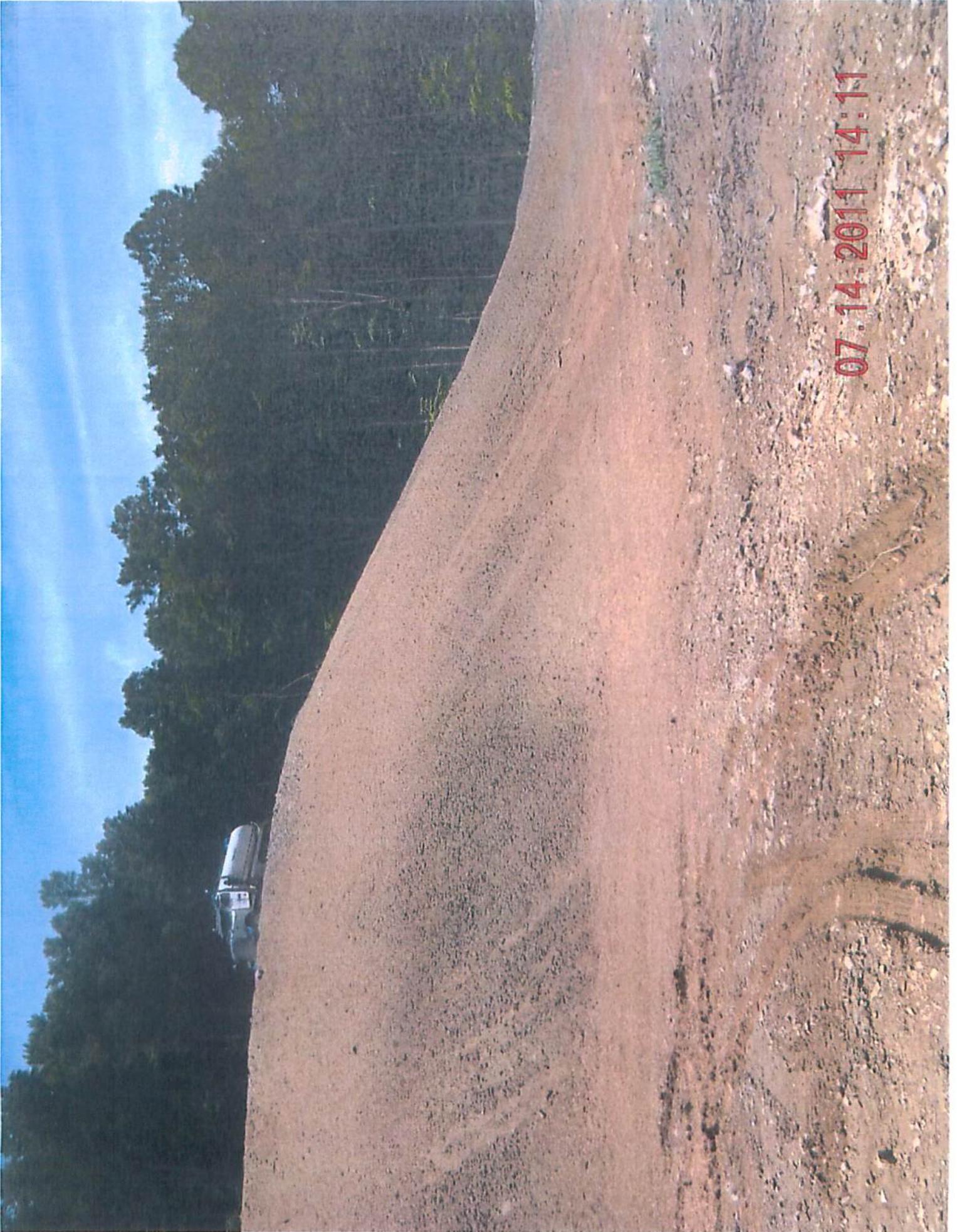
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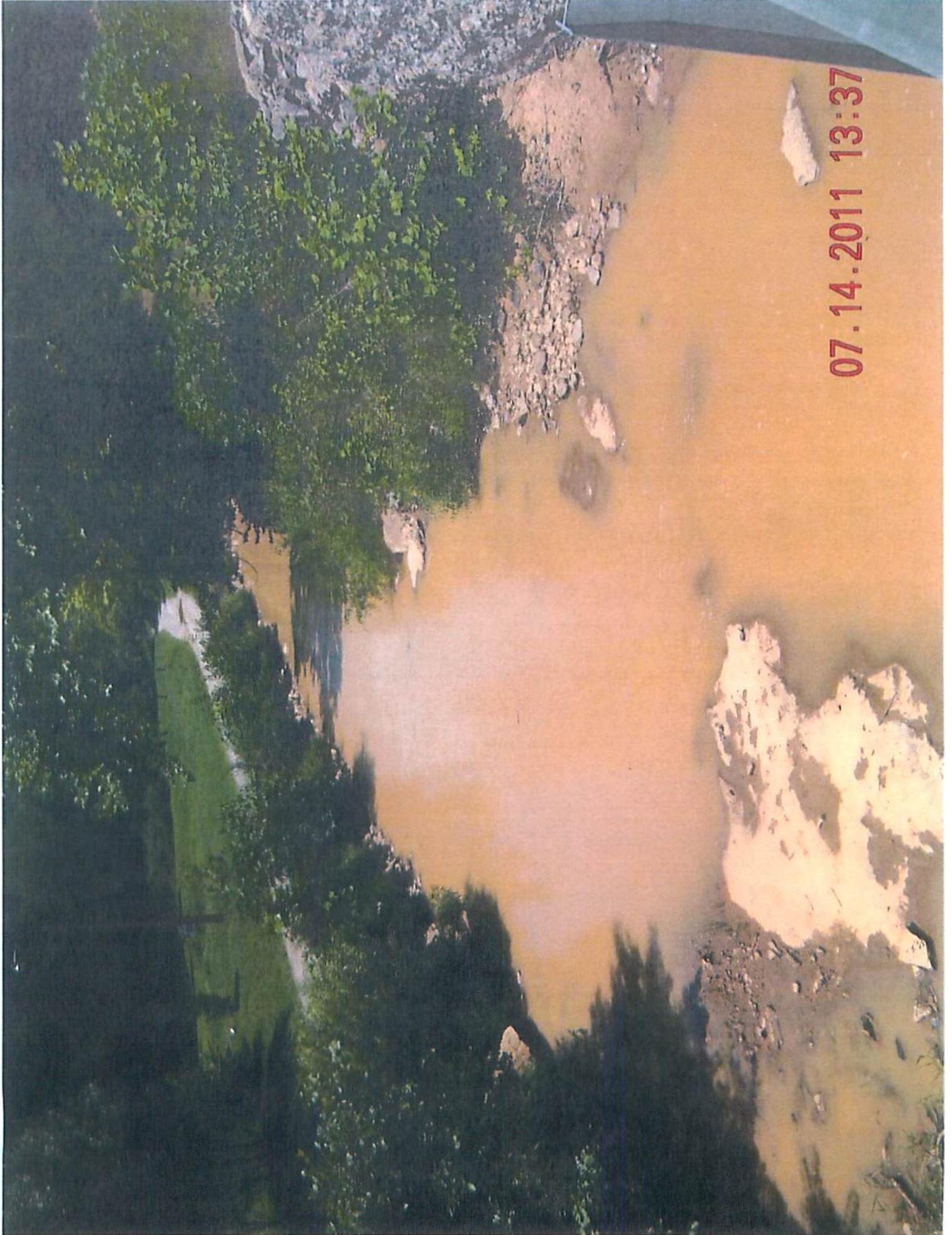
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Scott G. Mandirola, Director  
Division of Water and Waste Management  
*revised January 2011*

\_\_\_\_\_  
Date





07.14.2011 14:11



07.14.2011 13:37



07.14.2011 13:37

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Mountain V

Receiving Stream:

Queens Fork

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#											
			2a	2b										
a)	Amount of Pollutant Released	1 to 3	2	2										
b)	Toxicity of Pollutant	0 to 3	0	0										
c)	Sensitivity of the Environment	0 to 3	1	1										
d)	Length of Time	1 to 3	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	1										
Average Potential for Harm Factor			1	1	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	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  $\leq 40\%$  for Avg. Monthly or  $\leq 100\%$  for Daily Max., exceed numeric WQ standard by  $\leq 100\%$ , or report doesn't contain some minor information.

**Moderate** = exceedance of permit limit by  $\geq 41\%$  and  $\leq 300\%$  for Avg. Monthly,  $\geq 101\%$  and  $\leq 600\%$  for Daily Max., exceed numeric WQ standard by  $\geq 101\%$  and  $\leq$  of 600% or report doesn't fully address intended subject matter.

**Major** = exceedance of permit limit by  $\geq 301\%$  for Avg. Monthly,  $\geq 601\%$  for Daily Max., exceed numeric WQ standard by  $\geq 601\%$ , failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.





## Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

### Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

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

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

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

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

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

6.2.b.10 - Other factors

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

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

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

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

Public Notice Costs (cost for newspaper advertisement)

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

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

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

## Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$400
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			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$430</b>
<b>Penalty =</b>			<b>\$4,430</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>	