



west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

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

TO: Putnam PSD
Mike McNulty, General Manger
PO Box 860
Scott Depot, WV 25560

DATE: November 19, 2014

ORDER NO.: 8101

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 Putnam PSD.

FINDINGS OF FACT

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

1. Putnam PSD is conducting land disturbance activity in Scott Depot, Putnam County, West Virginia. Putnam PSD was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106068, on August 2, 2012.
2. On April 14, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Putnam PSD's WV/NPDES permit were observed and documented:
 - a. 47CSR2 Section 3.2.b - Putnam PSD caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the tributary of Rockstep Run continuing down Rockstep Run to Scary Creek.
 - b. D.1 - Putnam PSD failed to operate and maintain all erosion control devices. Specifically, silt fence was not trenched or not installed.

- c. G.4.e.2.D - Putnam PSD failed to inspect all erosion control devices at least once every seven (7) calendar days and within twenty-four (24) hours after any storm event of greater than 0.5 inches of rain per twenty-four (24) hour period.
- d. G.4.e.2.C.i - Putnam PSD created an open dump on the permitted site at the soil waste area.
- e. G.4.e.2.C.iv - Putnam PSD failed to train personnel on components and goals of the Storm Water Pollution Prevention Plan (SWPPP).
- f. G.4.e.2.A.i - Putnam PSD failed to temporary seed and mulch all areas where construction activities had ceased for more than seven (7) days.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. I14-40-034-GSR through I14-40-039-GSR were issued to Putnam PSD.

3. On August 20, 2014, WVDEP personnel and representatives of Putnam PSD met 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. Putnam PSD 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 twenty (20) days of the effective date of this Order, Putnam PSD shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Putnam PSD will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0115924, Registration No. WVR106068, and Order No. 8101. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

A copy of this plan shall be submitted to:

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

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable

plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of Putnam PSD's Legislative Rule and permit violations, Putnam PSD shall be assessed a civil administrative penalty of ten thousand two hundred thirty dollars (\$10,230) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of 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 include a reference to the Order No. and shall be mailed to:**

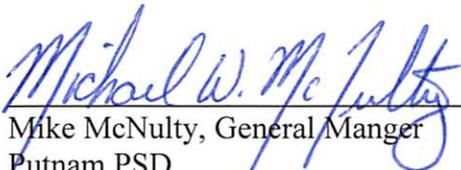
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Putnam PSD 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, Putnam PSD 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, Putnam PSD 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 Putnam PSD 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, Putnam PSD 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 Putnam PSD becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Putnam PSD 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 Putnam PSD 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 Putnam PSD (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 Putnam PSD 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 Putnam PSD 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 Putnam PSD, its successors and assigns.
7. This Order shall terminate upon Putnam PSD's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Mike McNulty, General Manger
Putnam PSD

11-26-2014

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised January 2013

RECEIVED

DEC 01 2014

**ENVIRONMENTAL
ENFORCEMENT
ENFORCEMENT**



Solid waste piled at soil waste area (04/14/14)



Solid waste placed adjacent to grubbed materials (04/14/14)



Silt fence not trenched (04/14/14)



Stream crossing not protected, no silt fence installed in this area (04/14/14)



View from upstream of sediments from HDD no silt fence installed in this area (04/14/14)



Sediment deposits at junction of stream tributaries (04/14/14)



Sediment deposits in stream 100 yards below the HDD site (04/14/14)



Erosion rills where seeding and mulch has not been applied (04/16/14)



Silt fence not maintained (04/16/14)



Horizontal directional drilling pit (04/14/14)



No BMPs installed between HDD pit and stream (04/14/14)



Stream crossing viewed from HDD pit area (04/14/14)



Silt fence installed across diversion (04/14/14)



No approved BMP where diversion enters stream (04/14/14)

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Putnam PSD **Receiving Stream:** Tributaries of Scary Creek

Treatment System Design Maximum Flow: MGD

Treatment System Actual Average Flow: MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#													
			2a	2b	2c	2d	2e	2f								
a)	Amount of Pollutant Released	1 to 3	3	1	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	1	0	1	0	1								
c)	Sensitivity of the Environment	0 to 3	1	1	0	1	0	1								
d)	Length of Time	1 to 3	1	1	1	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	2	1	0	1	0	1								
Average Potential for Harm Factor			1.6	1	0.4	1	0.4	1	No							
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	3	2	3	1	1	1								

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

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

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

Narrative WQ standard violations - case-by-case.

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

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

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

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

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

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

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

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

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

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

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

Public Notice Costs (cost for newspaper advertisement)

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

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

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

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	20		\$2,040
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$1,020)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,020)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$10,230

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$0
Comments:	