dep

west virginia department of environmental protection

Environmental Enforcement
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0470 Fax: (304) 926-0488

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

August 15, 2012

Bryan Chapman
Pea Ridge PSD
P.O. Box 86
Barboursville, WV 25504

CERTIFIED RETURN RECEIPT REQUESTED
91 7199 9991 7031 5497 1225

RE: Violation of Chapter 22, Article 11 of the WV State Code

Dear Mr. Chapman:

Enclosed is revised CONSENT ORDER NUMBER 7420 dated August 15, 2012. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to Pea Ridge PSD violating Chapter 22, Article 11 of the WV State Code at its facility located in Barboursville, Cabell County, West Virginia. This revision is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer, and your submittal of a Supplemental Environmental Project (SEP) proposal. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,

Michael A. Zeto
Chief Inspector

Enclosure

cc: Scott G. Mandirola, Director, DWWM (via e-mail)
Yogesh Patel, Asst. Director, DWWM/Permits
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
Laura McGee, Environmental Resources Specialist, EE (via e-mail)
Cynthia Musser, Environmental Inspector Supervisor, EE/WW (via e-mail)
Kevin Saunders, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

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: Bryan Chapman
Pea Ridge PSD
P.O. Box 86
Barboursville, WV 25504

DATE: August 15, 2012

ORDER NO.: 7420

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 Pea Ridge PSD (hereinafter "Pea Ridge").

FINDINGS OF FACT

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

1. Pea Ridge operates two wastewater collection and treatment systems and two wastewater collection systems located near Huntington, Cabell County, West Virginia. Pea Ridge was issued WV/NPDES Water Pollution Control Permit No. WV0027413 on June 30, 2008.

2. A sanitary sewer overflow (SSO) exists on Darnell Road in Huntington, WV due to Pea Ridge's movement of a sewer line approximately five years ago. Residents notified the West Virginia Department of Environmental Protection (WVDEP) of sewage spills from this SSO on June 21, June 28, and June 30, 2011. WVDEP personnel documented conditions not allowable, in that Pea Ridge allowed deposits or sludge banks, suspended solids, and odors in the vicinity of the waters of the state on June 28, 2011, a violation of Legislative Rule 47-2-3.3. Notice of Violation (NOV) No. W11-06-147-KWS was issued for this deficiency.

3. Pea Ridge failed to report these discharges to the emergency spill line, a violation of Legislative Rule 47-11-2.2. NOV No. W11-06-146 was issued for these deficiencies on June 30, 2011.

4. On November 8, 2011, WVDEP personnel and Pea Ridge met to discuss the terms and conditions of this Order.

5. On April 26, 2012, Pea Ridge submitted a Supplemental Environmental Project (SEP) proposal (attached) to WVDEP. The proposal involves the use of Pea Ridge's personnel and equipment to assist neighboring communities with sewage line inspections. Pea Ridge proposes to provide fifty (50) hours of camera system services to nearby districts. The SEP is an environmentally beneficial plan undertaken by Pea Ridge to mitigate a portion of the penalty assessed in 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. Pea Ridge shall immediately take all measures to initiate compliance with all pertinent laws and rules.

2. Within twenty (20) days of entry of this Order, Pea Ridge shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Pea Ridge will achieve compliance with all pertinent laws and rules. 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. Within one (1) year of entry of this Order, Pea Ridge shall complete the Supplemental Environmental Project (SEP) according to the plan proposed in its April 26, 2012

correspondence. WVDEP requires completion of twenty-five (25) of the fifty (50) proposed hours of camera system services. In the event that the camera work does not present itself within the specified time period, Pea Ridge reserves the right to extend the SEP schedule, pending approval by WVDEP. The approved SEP proposal has been incorporated into and become part of this Order.

4. Within sixty (60) days after completion of the SEP, Pea Ridge shall submit an SEP Completion Report, listing expenditures and detailing all actions performed in regard to the SEP. The Report shall be mailed to the addresses contained within Order for Compliance No. Two (2). Failure to complete the SEP in accordance with the approved plan and schedule is a violation of this Order, and Pea Ridge shall be required to pay the penalties stipulated in Order for Compliance No. Five (5).

5. Because of Pea Ridge's WV Legislative Rule violations, Pea Ridge shall be assessed a civil administrative penalty of nine thousand nine hundred ninety dollars ($9,990) to be paid as follows:

    a. Three thousand seven hundred fifty dollars and twenty-five cents ($3,750.25) shall 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.

    b. The remaining six thousand two hundred thirty-nine dollars and seventy-five cents ($6,239.75) shall be applied to the WVDEP approved Supplemental Environmental Project (SEP) proposed by Pea Ridge on April 26, 2012. In the event that the SEP is not completed as proposed, the entire value placed upon the SEP shall become due and payable upon demand by WVDEP.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

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

OTHER PROVISIONS

1. Pea Ridge 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, Pea Ridge 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, Pea Ridge 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 Pea Ridge 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, Pea Ridge 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 Pea Ridge 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 Pea Ridge 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 Pea Ridge (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 Pea Ridge 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 Pea Ridge 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 Pea Ridge, its successors and assigns.

7. This Order shall terminate upon Pea Ridge's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Bryan Chapman
Pea Ridge PSD

3-4-13
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

RECEIVED
MAR 29 2013
ENVIRONMENTAL
ENFORCEMENT

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

_____
Date

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Pea Ridge PSD **Receiving Stream:**

Treatment System Design Maximum Flow: **MGD**

Treatment System Actual Average Flow: **MGD** (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF# 2	3											
a)	Amount of Pollutant Released	1 to 3	2	1											
b)	Toxicity of Pollutant	0 to 3	1	0											
c)	Sensitivity of the Environment	0 to 3	1	0											
d)	Length of Time	1 to 3	1	1											
e)	Actual Exposure and Effects thereon	0 to 3	1	0											
	Average Potential for Harm Factor		1.2	0.4	No	No	No	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3	2	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.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

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

		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
2	Moderate	Moderate	$3,200	1	$3,200
3	Minor	Major	$1,700	3	$5,100
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
Total Base Penalty					$8,300

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		$1,660
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
Penalty Adjustments			**$1,690**
Penalty =			**$9,990**

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:	