



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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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 County Commission
Attn: Brian Donat
3389 Winfield Road
Winfield, WV 25213

DATE: June 14, 2013

ORDER NO.: 7848

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 County Commission.

FINDINGS OF FACT

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

1. Putnam County Commission is conducting land disturbance activity in Hurricane, Putnam County, West Virginia. Putnam County Commission was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106120, on June 13, 2012.
2. On September 25, 2012, 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 County Commission's WV/NPDES permit were observed and documented:
 - a. G.4.e.1.A.-The permittee failed to adhere to the proposed timetable for major activities set forth in the erosion and sediment control plan.
 - b. 47CSR2 Section 3.2.a-Putnam County Commission caused conditions not allowable by creating distinctly visible solids in waters of the State. Turbid water was observed leaving the site.

- c. G.4.e.2.A.ii.j.-The permittee allowed sediment-laden water to leave the site without going through an appropriate best management practice.
- d. G.4.e.2.D.-The permittee failed to inspect all erosion controls 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.
- e. G.4.e.2.A.-The permittee failed to provide inlet and outlet protection for sediment trapping structures with appropriate materials such as riprap.
- f. G.4.e.2.C.i.-The permittee failed to dispose of all solid waste and construction/demolition material in accordance with the West Virginia State Code and Legislative Rule 33CSR1.
- g. G.4.e.2.A.ii.d.-The permittee failed to provide stabilized diversions for run-off into sediment trapping structures.
- h. G.4.e.2.A.ii.f.-The permittee failed to install pipe slope drains.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. F12-40-228-KWS, F12-40-229-KWS, F12-40-230-KWS, F12-40-231-KWS, F12-40-232-KWS, F12-40-233-KWS, F12-40-234-KWS, and F12-40-235-KWS were issued to Putnam County Commission.

3. On October 1, 2012, WVDEP personnel conducted an inspection of the site to evaluate Putnam County Commission's response to deficiencies noted in the September 25, 2012 inspection. During the inspection, the following violations of WV Legislative Rules and Putnam County Commission's WV/NPDES permit were observed and documented:
 - a. G.4.e.1.A.-Compliance with the erosion and sediment control plan continued to be unsatisfactory.
 - b. 47CSR2 Section 3.2.a-Putnam County Commission caused conditions not allowable by creating distinctly visible solids in waters of the State. Turbid water was observed leaving the site.

As a result of the aforementioned violations, NOV No. F12-40-236-KWS was issued to Putnam County Commission.

4. On October 4, 2012, WVDEP personnel conducted an inspection of the site. During the inspection, violations of the following sections of WV Legislative Rules and Putnam County Commission's WV/NPDES permit were observed and documented:
 - a. 47CSR2 Section 3.2.a-Putnam County Commission caused conditions not allowable by creating distinctly visible solids in waters of the State. Turbid water was observed leaving the site.
 - b. G.4.e.2.A.i.-The permittee failed to temporarily seed and mulch all areas where construction activities had ceased for more than seven (7) days.
 - c. C.15.-The permittee failed to post an outlet marker at all permitted outlets from the construction site.

As a result of the aforementioned violations, NOV Nos. F12-40-237-KWS, F12-40-238-KWS, and F12-40-239-KWS were issued to Putnam County Commission.

5. On October 15, 2012, Order No. 7739 was issued by WVDEP to Putnam County Commission. The Order required Putnam County Commission to immediately cease and

desist any further land development activity until all documented violations had been abated.

6. On October 19, 2012, WVDEP personnel confirmed that violations leading to Order No. 7739 had been abated and, therefore, allowed development activities to resume on site.
7. On March 7, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Putnam County Commission's WV/NPDES permit were observed and documented:
 - a. B-Erosion control devices were not in place as detailed in the approved Storm Water Pollution Prevention Plan (SWPPP).
 - b. G.4.e.2.C.iii.-The permittee allowed a petroleum product to flow onto the land surface in such a manner that could impact groundwater quality.
 - c. G.4.e.2.A.ii.c.-The permittee failed to provide inlet and outlet protection for sediment control structures.
 - d. D.1-The permittee failed to operate and maintain all erosion control devices.
 - e. G.4.e.2.A.i.d.-The permittee failed to seed and stabilize all temporary diversions immediately and prior to becoming functional.
 - f. G.4.e.2.A.i.c.-The permittee failed to immediately reseed and mulch all areas where the seed had failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within thirty (30) days after seeding and mulching.
 - g. G.4.e.2.A.i.-The permittee failed to temporary seed and mulch all areas where construction activities had ceased for more than seven (7) days.
 - h. G.4.e.2.A.ii.j.-The permittee allowed sediment-laden water to leave the site without going through an appropriate device.

As a result of the aforementioned violations, NOV Nos. F12-40-280-KWS, F12-40-281-KWS, F12-40-282-KWS, F12-40-284-KWS, F12-40-286-KWS, F12-40-287-KWS, F12-40-288-KWS, and F12-40-289-KWS were issued to Putnam County Commission.

8. On March 20, 2013, WVDEP personnel received a letter from D.L. Martin Construction and Excavating Company, a contractor for Putnam County Commission, in response to the above NOVs. The letter stated that, "Each item mentioned ha[d] been addressed in the field, and appropriate corrections ha[d] been made."
9. On March 21, 2013, WVDEP personnel visited the site and observed some corrective measures, namely the excavation of a buried drop inlet and culvert; however, none of the previously issued NOVs had been completely abated.
10. On March 25, 2013, Pray Construction Company, also a contractor for Putnam County Commission, requested an onsite meeting with WVDEP personnel. The purpose of the meeting was to provide additional guidance and compliance assistance to both Pray Construction Company and D.L. Martin Excavating Company. During this meeting WVDEP personnel determined that Putnam County Commission installed an alternate riser on the pond which was not reflected on the plans approved by WVDEP on June 12, 2012.
11. On March 27 and 29, 2013, WVDEP personnel conducted follow-up inspections at the facility. During the inspections, a violation of the following section of the terms and

conditions of Putnam County Commission's WV/NPDES permit was observed and documented:

- a. G.4.e.2.A.ii.a.-The pond was not constructed in a manner which provided half permanent pool and half dry storage.

As a result of the aforementioned violation, NOV No. F13-40-291-KWS was issued to Putnam County Commission.

12. On April 8, 2013, WVDEP personnel met on-site with representatives of Putnam County Commission. During the site visit, WVDEP personnel determined that Putnam County Commission had corrected several of the aforementioned violations; however, ditchlines were not stabilized, a slope was not seeded, and silt fence was improperly installed/maintained. Putnam County Commission represented that it would complete work to correct these deficiencies within three (3) weeks.
13. On June 6, 2013, WVDEP personnel and representatives of Putnam County Commission 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 County Commission 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 thirty (30) days of the effective date of this Order, Putnam County Commission shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Putnam County Commission 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. WVR106120 and Order No. 7848. 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 County Commission's Legislative Rule and permit violations, Putnam County Commission shall be assessed a civil administrative penalty of thirteen thousand five hundred thirty dollars (\$13,530) 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 County Commission 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 County Commission 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 County Commission 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 County Commission 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 County Commission 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 County Commission becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Putnam County Commission 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 County Commission 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 County Commission (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 County Commission 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 County Commission 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 County Commission, its successors and assigns.
7. This Order shall terminate upon Putnam County Commission's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Brian Donat

Brian Donat
Putnam County Commission

6/18/13

Date

Public Notice begin:

RECEIVED

Date

Public Notice end:

JUN 21 2013

ENVIRONMENTAL
ENFORCEMENT

Date

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

Date



Sediment-laden water leaving site, 9-25-12



Discharge causing conditions not allowable, 9-25-12



Discharge causing conditions not allowable, 10-1-12



Hole allowing erosion below silt fence, 10-4-12



Discharge causing conditions not allowable, 10-4-12



Large portion of site unstabilized, 3-7-13



Silt fence not properly maintained, 3-7-13



Erosion channel below straw wattle, 3-7-13



Improperly joined pipe slope drain/clean water diversion, 3-7-13



Improperly joined pipe slope drain/clean water diversion, 3-7-13



Hole allowing erosion below silt fence, 3-7-13



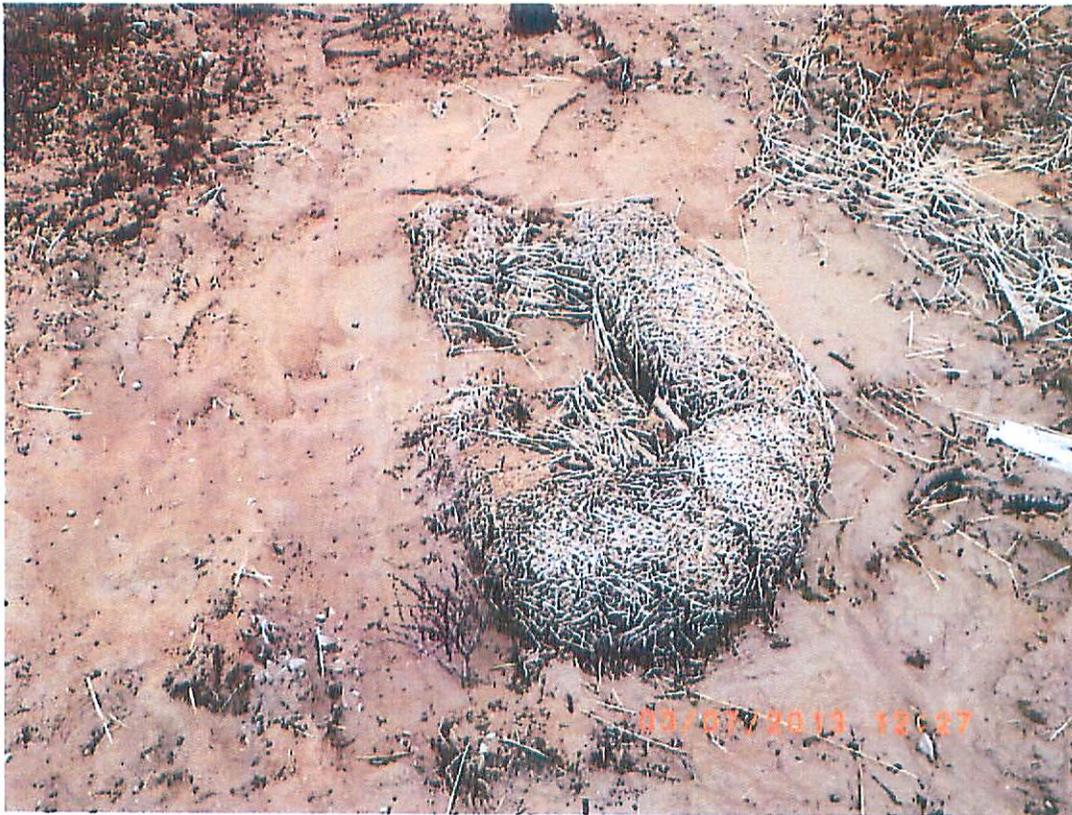
Drop inlet protection not properly maintained, 3-7-13



Unstabilized ditchline, 3-7-13



Culvert completely blocked by sediment, 3-7-13



Drop inlet completely covered with sediment, 3-7-13



Large portion of site unstabilized, 3-21-13



Holes in silt fence not properly addressed, 3-21-13



Erosion channel below straw wattle, 3-21-13



Hole allowing erosion below silt fence, 3-21-13



Sediment accumulation in drop inlet, 3-21-13



Improperly protected clean water diversion, 3-21-13



Water level at top of riser, 3-21-13

Water level at top of riser, 3-27-13



Water level at top of riser showing lack of dry storage, 3-29-13

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Putnam County Commission **Receiving Stream:** Mill 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#													
			7a	7b	7c	7d	7e	7f	7g	7h	11a					
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1				
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	1	1	1	1				
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1	1	1	1	1				
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1				
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1	1	1	1				
Average Potential for Harm Factor			1	1	1	1	1	1	1	1	1	1	No	No	No	No
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	2	2	2	2	2	2	2	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.

		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
7a	Minor	Moderate	\$1,500	1	\$1,500
7b	Minor	Moderate	\$1,500	1	\$1,500
7c	Minor	Moderate	\$1,500	1	\$1,500
7d	Minor	Moderate	\$1,500	1	\$1,500
7e	Minor	Moderate	\$1,500	1	\$1,500
7f	Minor	Moderate	\$1,500	1	\$1,500
7g	Minor	Moderate	\$1,500	1	\$1,500
7h	Minor	Moderate	\$1,500	1	\$1,500
11a	Minor	Moderate	\$1,500	1	\$1,500
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					\$13,500

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		\$1,350
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		10	(\$1,350)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$13,530

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:	