west virginia department of environmental protection

Office of Oil and Gas
601 57th Street
Charleston, WV 25304
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

CONSENT ORDER
ISSUED UNDER
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 6

TO: Raven Ridge Energy
3230 Pennsylvania Ave.
Charleston, WV 25302

DATE: October 30, 2013

ORDER NO.: 2013-74

INTRODUCTION

This Consent Order (hereinafter "Order") is issued by the Office of Oil and Gas (hereinafter "OOG"), by and through its Chief, pursuant to the authority of W. Va. Code §§ 22-1-1, 22-6-1 and 22-11-1 *et seq.* to Raven Ridge Energy (hereinafter "Raven Ridge" or "Operator"), collectively the "Parties."

FINDINGS OF FACT

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

1. OOG, an office within the West Virginia Department of Environmental Protection, is the agency with the duty and authority to execute and enforce W. Va. Code § 22-6-1 *et seq.*, and the rules and regulations promulgated thereunder.

2. Raven Ridge is a "person" as defined by W. Va. Code § 22-6-1(n), with a corporate address as 3230 Pennsylvania Avenue, Charleston, WV 25302.

3. Raven Ridge is the owner of a gas well identified as API # 47-039-06348, located on the Bodkins well pad in Kanawha County, West Virginia.

4. On March 18, 2013, OOG issued Raven Ridge NOV 8853 for a violation of W. Va. Code § 22-11-8(b)(1). The NOV states that "[a]llow sewage, industrial wastes or other wastes, or the effluent therefrom, produced by or emanating from any point source, to flow into the water of the state."

5. On March 20, 2013, OOG issued Raven Ridge Notice of Abatement for NOV 8853.

CONCLUSIONS OF LAW

1. West Virginia Code § 22-1-6(d) requires, in part, that "[i]n addition to other powers, duties and responsibilities granted and assigned to the secretary by this chapter, the secretary is authorized and empowered to...(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the department is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the department is charged with enforcing..."

2. West Virginia Code § 22-11-8(b)(1) requires, in part, that "(b) It is unlawful for any person, unless the person holds a permit therefor from the department, which is in full force and effect, to: (1) Allow sewage, industrial wastes or other wastes, or the effluent therefrom, produced by or emanating from any point source, to flow into the waters of this state;"

ORDER FOR COMPLIANCE

After a full and complete negotiation of all matters set forth in this Consent Order, and upon mutual exchange of the covenants contained herein, the Parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Office of Oil and Gas and AGREED to by Raven Ridge Energy as follows:

1. ***Authority.*** This Consent Order is an Order of the Office of Oil and Gas authorized and issued pursuant to W. Va. Code §§ 22-1-1, 22-6-1 and 22-6A-1 *et seq.*

2. ***Offer to Enter Consent Order; Expiration; Acceptance.*** Until executed by the parties, this Consent Order constitutes a unilateral offer to enter into this Consent Order under the terms and conditions contained herein. This offer, and its terms and conditions, shall expire seven (7) calendar days from date specified on page one of this Consent Order. Acceptance requires returning an executed copy of this Consent Order to the Office of Oil and Gas within the expiration period. Only the Chief shall have the right to extend the expiration period beyond seven (7) days.

3. ***Effect of This Consent Order.*** The Operator hereby waives any right to appeal this Consent Order. The Operator agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Chief's jurisdiction regarding this Consent Order.

4. ***Resumption of Activities.*** Upon execution of this Consent Order, OOG shall issue abatements for all violations noted herein.

5. ***Findings and Conclusions.*** Raven Ridge does not admit or agree to any factual or legal determination made by OOG in this Consent Order. However, Raven Ridge agrees not to challenge any finding or conclusion made by OOG in this Consent Order in any administrative, civil or criminal proceeding involving Raven Ridge and OOG to enforce this Consent Order.

6. ***Civil Penalty Assessment.*** Raven Ridge agrees to pay a civil penalty assessment of one thousand seven hundred and ninety dollars and no cents ($1,790.00) as a consequence of the violations described in this Order. Payment shall be made within thirty (30) days of the effective date of the Order. Payment shall be mailed and payable to:

   Office of Oil and Gas
   601 57th Street, SE
   Charleston, WV 25304

7. ***Stipulated Penalties.*** If the Operator fails to take any action required by this Order, or pay the foregoing civil administrative penalty amount in timely fashion, the Operator agrees to pay a stipulated penalty of two thousand five hundred dollars ($2,500) for each day that the action remains incomplete. The Chief shall first notify the Operator in writing that it is in violation of the terms of conditions of the Order, and the stipulated penalty shall then become immediately due and payable. Payments made pursuant to this Order are not tax-deductible expenditures for purposes of State or federal law.

8. ***Reservation of Rights.*** The Office of Oil and Gas reserves the right to require additional measures to achieve compliance with applicable law.

9. ***Liability of the Operator.*** The Operator shall be liable for any violations of this Consent Order, including those caused by, contributed to, or allowed by its officers, directors, agents, employees, contractors, consultants, successors and assigns. This Consent Order is binding on the Operator, its successors and assigns.

10. ***Exiting and Ongoing Obligations.*** Compliance with the terms and conditions of this Consent Order shall not in any way be construed as relieving the Operator of any obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Consent Order may subject the Operator to additional penalties and injunctive relief in accordance with the applicable law.

11. ***Decisions Under Consent Order.*** Any decision which the Office of Oil and Gas makes under the provisions of this Consent Order is not intended to be a final action, nor shall it rise to a contested case under the Chapter 29A of the West Virginia Code (State Administrative Procedures Act).

12. ***Force Majeure.*** If any event occurs which causes delay in the achievement of the requirements of this Order, the Operator 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 the Operator becomes aware of such a delay, notification shall be provided to the Chief, and the Operator shall within ten (10) working days after 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 the Operator intends to implement these measures. If the Chief agrees that the

delay has been or will be caused by circumstances beyond the reasonable control of the Operator (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 Chief shall be considered a binding extension of this Order and of the requirements herein. The determination of the Chief shall be final and not subject to appeal.

13. ***Severability.*** The provisions of this Consent 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.

14. ***Entire Agreement.*** This Consent Order shall constitute the entire agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or intent of any provision contained in this document in any litigation or proceeding.

15. ***Attorney's Fees.*** The Parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters arising prior to execution of this Consent Order. Following the execution of this Consent Order, any reasonable cost the Office of Oil and Gas expends in defending or prosecuting the effect, administration, enforcement, jurisdiction or other matters regarding this Consent Order shall be paid by the Operator unless it prevails on the merits in a court of competent jurisdiction.

16. ***Modifications.*** No changes, additions, modification or amendments of this Order shall be effective unless they are set out in writing and signed by the Parties.

17. ***Titles.*** A title used at the beginning of any paragraph of this Consent Order may be used to aid in the construction of that Paragraph, but shall not be treated as controlling.

18. ***Signatories.*** The signatories to this Order assert they have the authority to enter into this order on behalf of the respective parties.

Now, therefore, in accordance with Chapter 22, Article 6, Section 1 and Chapter 22, Article 6A, Section 1 *et seq.* of the West Virginia Code, it is hereby AGREED between the Parties, and ORDERED by the Chief:

Raven Ridge Energy

11/12/13
Date

James A. Martin, Chief
Office of Oil and Gas
West Virginia Department of Environmental Protection

Date

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Raven Ridge Energy **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# NOV												
a)	Amount of Pollutant Released	1 to 3	1												
b)	Toxicity of Pollutant	0 to 3	2												
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												
	Average Potential for Harm Factor		1.2	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	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.

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
NOV	Moderate	Minor	$2,200	1	$2,200
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					$2,200

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 -			$0
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	($220)
6.2.b.3 - Cooperation with the Secretary		10	($220)
6.2.b.5 - Ability to Pay			$0
Penalty Adjustments			**($410)**
Penalty =			**$1,790**

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:	