



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: Ricop Construction
Mark Ludwig
2040 Fairwood Ave.
Columbus, OH 43207

DATE: October 1, 2013

ORDER NO.: 7896

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 Ricop Construction.

FINDINGS OF FACT

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

1. Ricop Construction is conducting land disturbance activity located in Parkersburg, Wood County, West Virginia. Ricop Construction was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR105760, on October 25, 2011.
2. On December 15, 2011, 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 Ricop Construction's WV/NPDES permit were observed and documented:
 - a. 47CSR2 Section 3.2.b-The Permittee caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the stream.
 - b. C.11-The Permittee failed to modify permit coverage before expanding the scope of the project and failed to submit a request at least forty-five (45) days prior to the commencement of the proposed action for modification if no public notice period is required or ninety (90) days prior to construction if a public notice period is required.

Promoting a healthy environment.

- c. D.1-The Permittee failed to operate and maintain all erosion and sediment control devices. Specifically, installation and maintenance of silt fence was inadequate.
- d. G.4.b.5-The Permittee failed to display the required public notice entrance sign for the duration of the project
- e. G.4.e.2.A.ii.j-The Permittee allowed sediment-laden water to leave the site without going through an appropriate device.
- f. G.4.e.2.A.i.d-The Permittee failed to seed and stabilize all temporary diversions immediately and prior to becoming functional.
- g. G.4.e.1.E-The Permittee failed to install stone access entrance and exits to reduce tracking of sediments onto public or private roads.
- h. G.4.a-The Permittee failed to retain a copy of the Storm Water Pollution Prevention Plan (SWPPP) and/or Groundwater Protection Plan (GPP) on site and available for review.
- i. 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.
- j. B-The Permittee failed to comply with the approved SWPPP. Several erosion and sediment controls were not in place as detailed by the SWPPP, including silt fence, stabilized outlets of existing stormwater drainage, and diversions and ditch checks.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. I11-54-056-JCC through I11-54-065-JCC were issued to Ricop Construction.

3. On October 5, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Ricop Construction's WV/NPDES permit were observed and documented:
- a. G.4.e.2.A.i.c-The Permittee failed to immediately reseed and mulch all areas where the seed failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within thirty (30) days after seeding and mulching.
 - b. G.4.e.2.A.ii.f-The Permittee failed to protect fill slopes by using measures to divert runoff away from the fill slopes to conveyance measures such as pipe slope drains or stable channels.

As a result of the aforementioned violations, NOV Nos. I12-54-246-GSR and I12-54-247-GSR were issued to Ricop Construction.

4. On June 6, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Ricop Construction's WV/NPDES permit were observed and documented:
- a. 47CSR2 Section 3.2.b-The Permittee caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the stream.
 - b. C.15-The Permittee failed to post an outlet marker at all permitted outlets from the construction site.
 - c. G.4.e.2.A.ii-The Permittee failed to provide proper structural practices. Specifically, rock outlet protection was inadequate.

- d. G.4.e.2.A.i.c-The Permittee failed to immediately reseed and mulch all areas where the seed failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within thirty (30) days after seeding and mulching.

As a result of the aforementioned violations, NOV Nos. I13-54-187-GSR through I13-54-190-GSR were issued to Ricop Construction.

5. On June 6, 2013, WVDEP personnel conducted an inspection of the facility at the request of the contractor on-site. At the time of the inspection, it was noted that repairs were not sufficient to handle the large volume of water discharging to the outlets. Additional erosion rills were developing due to poor vegetation. Sediment deposits were noted on the bottom of the stream.
6. On September 17, 2013, WVDEP personnel and representatives of Ricop Construction 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. Ricop Construction 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, Ricop Construction shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Ricop Construction 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. WVR105760, and Order No. 7896. 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 Ricop Construction's Legislative Rule and permit violations, Ricop Construction shall be assessed a civil administrative penalty of five thousand eight hundred eighty dollars (\$5,880) 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:**

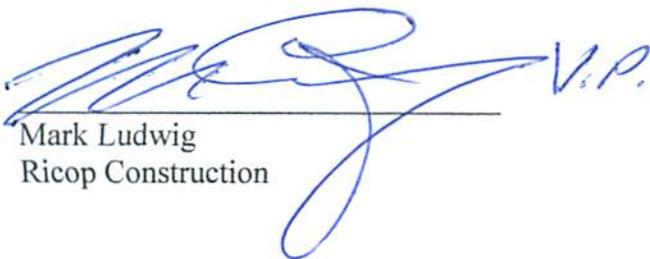
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

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



Mark Ludwig
Ricop Construction

Date 10/8/13

Public Notice begin:

Date

Public Notice end:

Date

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

Date



- Discharge from existing stormwater system flowing onto fill slope. Stabilized outlet protection not installed as shown on the approved plans.



- Temporary diversion not stabilized, conveying sediment laden water to the stream without going through an appropriate control.

Revised September 1, 2011

Photos from 12/15/11 inspection



Erosion rills on site (10/05/12)



Erosion around riprap diversion (10/05/12)



Erosion around riprap diversion has greatly increased (06/06/13)



Erosion rill leading from diversion to the stream (06/06/13)



Silt fence down where site meets stream (06/06/13)



Silt fence installed across diversion, no stabilized diversion to stream (07/10/13)



Sediment deposits in the stream (07/10/13)



Discharge from outlet has displaced riprap from repairs (07/10/13)



Erosion rills are developing down slope (07/10/13)



Poor quality vegetation on slopes (07/10/13)

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Ricop Construction Receiving Stream: Tributary of Worthington 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#													
			3b	4a	4c	4d										
a)	Amount of Pollutant Released	1 to 3	1	1	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1	1	1										
d)	Length of Time	1 to 3	1	1	1	2										
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	0										
Average Potential for Harm Factor			1	1	1	1	No									
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	2	3	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.

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		\$650
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	(\$650)
6.2.b.3 - Cooperation with the Secretary		10	(\$650)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$620)
Penalty =			\$5,880

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:	