



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
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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: Brad Sall
1324 Turkey Run Rd.
Dallas, WV 26036

DATE: January 22, 2015

ORDER NO.: 8191

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 Brad Sall (hereinafter "Mr. Sall").

FINDINGS OF FACT

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

1. Mr. Sall operates a construction site located in Dallas, Marshall County, West Virginia.
2. On June 19, 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 were observed and documented:
 - a. 47CSR2 Section 3.2.b.-Mr. Sall created conditions not allowable in waters of the State. Specifically, Mr. Sall diverted the original flow path of Turkey Run and cleared and grubbed an approximate 75' wide path up a hillside without putting in place any Best Management Practices (BMPs). Cut timber and sediment slipped off the cleared hillside and filled Turkey Run.
 - b. 47CSR2 Section 3.2.i.-Mr. Sall created conditions not allowable in waters of the State. Specifically, Mr. Sall adversely altered the integrity of waters of the State by diverting an Unnamed Tributary (UT) of Turkey Run from the original stream contours.

As a result of the aforementioned violations, Notice of Violations (NOV) Nos. W-NW-TAM-061914-001 and W-NW-TAM-061914-002 were issued to Mr. Sall.

Promoting a healthy environment.

3. On January 21, 2015, WVDEP personnel and Mr. Sall discussed, by telephone, 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. Mr. Sall shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, Mr. Sall shall electronically submit an administratively complete application for WV/NPDES permit coverage for the regulated activity at the aforementioned site. Any questions regarding the application process shall be directed to WVDEP DWWM-Permitting Section at (304) 926-0495.
3. Within thirty (30) days of the effective date of this Order, Mr. Sall shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Mr. Sall will achieve compliance with all laws and rules. The plan of correction action shall include, but not be limited to:
 - a. A stream mitigation and restoration plan for all impacted areas of Turkey Run. Mr. Sall shall retain the services of a registered professional engineer who specializes in stream restoration and mitigation design to develop the plan. The plan shall include, but not be limited to, provisions for restoring Turkey Run and the UT of Turkey Run to their original contours. The plan shall also include provisions for obtaining all required local, state, and federal permits prior to any activity related to stream mitigation and restoration.
 - b. A permanent slope stabilization plan.
 - c. A list of BMPs and a description of implementation and maintenance.
 - d. A Stormwater Pollution Prevention Plan and a Groundwater Protection Plan.

The plan of corrective action shall make reference to Order No. 8191. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road
Fairmont, WV 26554**

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.

4. Because of Mr. Sall's Legislative Rule violations, Mr. Sall shall be assessed a civil administrative penalty of four thousand four hundred thirty dollars (\$4,430) 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. Mr. Sall 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, Mr. Sall 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, Mr. Sall 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 Mr. Sall 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, Mr. Sall 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 Mr. Sall becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Mr. Sall 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 Mr. Sall 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 Mr. Sall (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 Mr. Sall 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 Mr. Sall 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 Mr. Sall, its successors and assigns.
7. This Order shall terminate upon Mr. Sall's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Brad Sall

2-9-15

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013

RECEIVED

FEB 11 2015

**ENVIRONMENTAL
ENFORCEMENT**

**WV Department of Environmental Protection
Environmental Enforcement
Photo Log**

Company Name: Brad Sall

Facility Name: N/A

Location: Marshall Co.

Stream: Turkey Run

Photo #	Date	Time	Description	Coordinates	Notice Of Violation
DSCN1264	6/19/14	9:34	Turkey Run filled in. Photo taken facing upstream.	N 39° 59.831' W 80° 32.347'	W-NW-TAM-061914-001
DSCN1265	6/19/14	9:34	Turkey Run filled in. Taken at same location as Photo DSCN 1264 looking downstream.	N 39° 59.831' W 80° 32.347'	W-NW-TAM-061914-001
DSCN1268	6/19/14	9:34	Turkey Run diversion. Photo taken looking downstream.	N 39° 59.831' W 80° 32.347'	W-NW-TAM-061914-001
DSCN1269	6/19/14	9:35	Turkey Run filled in on the left of photo. Turkey Run diversion on the right of photo. Photo taken looking downstream.	N 39° 59.831' W 80° 32.347'	W-NW-TAM-061914-001
DSCN1286	6/19/14	10:18	Overview of cleared hillside with slip. Photo taken from Ridge off of Turkey Run Road.		
DSCN1270	6/19/14	9:35	The lower part of the cleared hillside. Timber and slip material filled the stream.	N 39° 59.847' W 80° 32.299'	W-NW-TAM-061914-002
DSCN1272	6/19/14	9:36	Filled in stream with timber and slip material.	N 39° 59.847' W 80° 32.299'	W-NW-TAM-061914-002
DSCN1273	6/19/14	9:36	Photo taken upstream looking downstream.	N 39° 59.847' W 80° 32.299'	W-NW-TAM-061914-002
DSCN1274	6/19/14	9:36	Turkey Run reaching bank full flow due to slip material and timber blocking flow.	N 39° 59.847' W 80° 32.299'	W-NW-TAM-061914-002
DSCN1275	6/19/14	9:37	Photo taken at same location as DSCN1274 looking upstream.	N 39° 59.847' W 80° 32.299'	W-NW-TAM-061914-002
DSCN1280	6/19/14	9:42	Mud bog area next to Turkey Run.	N 39° 59.928' W 80° 32.169'	
DSCN1282	6/19/14	9:44	Mud bog area on the left of photo. Turkey Run on the right of photo.	N 39° 59.928' W 80° 32.169'	
DSCN1283	6/19/14	9:44	Ephemeral stream diverted into mud bog area.	N 39° 59.928' W 80° 32.169'	

DSCN1284	6/19/14	9:44	Ephemeral stream diverted to mud bog area. Red arrow indicates where stream should be.	N 39° 59.928' W 80° 32.169'
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Photographer Tonya Mather 



DSCN1264: Turkey Run filled in. Photo taken facing upstream.



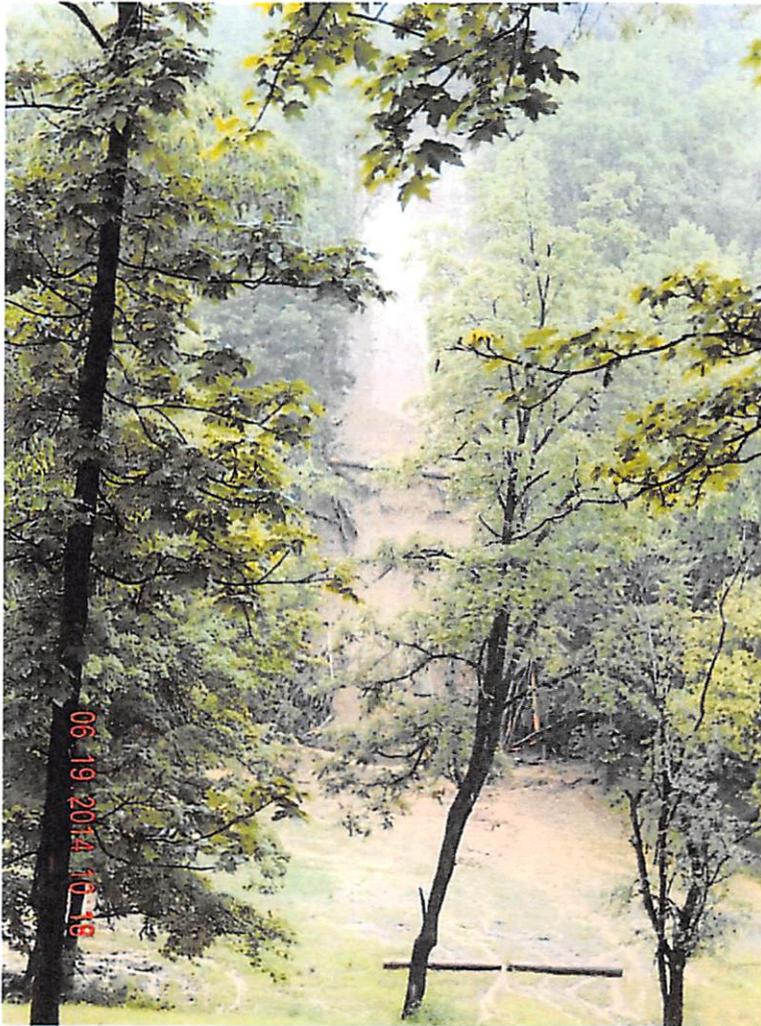
DSCN1265: Turkey Run filled in. Taken at same location as Photo DSCN 1264 looking downstream.



DSCN1268: Turkey Run diversion. Photo taken looking downstream.



DSCN1269: Turkey Run filled in on the left of photo. Turkey Run diversion on the right of photo. Photo taken looking downstream.



DSCN1286: Overview of cleared hillside with slip. Photo taken from Ridge off of Turkey Run Road.



DSCN1270: The lower part of the cleared hillside. Timber and slip material filled the stream.



DSCN1272: Filled in stream with timber and slip material.



DSCN1273: Photo taken upstream looking downstream.



DSCN1274: Turkey Run reaching bank full flow due to slip material and timber blocking flow.



DSCN1275: Photo taken at same location as DSCN1274 looking upstream.



DSCN1280: Mud bog area next to Turkey Run.



DSCN1282: Mud bog area on the left of photo. Turkey Run on the right of photo.



DSCN1283: Ephemeral stream diverted into mud bog area.



DSCN1284: Ephemeral stream diverted to mud bog area. Red arrow indicates where stream should be.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Brad Sall Receiving Stream: Turkey Run

Treatment System Design Maximum Flow: N/A MGD

Treatment System Actual Average Flow: N/A MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			2.a.											
a)	Amount of Pollutant Released	1 to 3	3											
b)	Toxicity of Pollutant	0 to 3	1											
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			1.4	No										
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	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.

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		\$440
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$0		\$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	(\$440)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$4,430

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: Economic benefit considered but not applied.	