



GENERAL CONTRACTOR · CONSTRUCTION MANAGER

April 9, 2012

Mr. Michael A. Zeto  
Chief Inspector  
West Virginia Department of Environmental Protection  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304



APR 11 2012

ENVIRONMENTAL  
ENFORCEMENT

**RE: WVDEP Consent Order Number 7526  
Fairmont Armed Forces Reserve Center  
TEDCO Project No.: 10-0537**

Dear Chief Inspector Zeto:

Please see attached signed copy of your Consent Order Number 7526 dated April 2, 2012.

You will note that we have taken one exception to the Order of Compliance. Specifically, Item 4.b (the corrective action for TEDCO scheduling and the timeline for how and when sediment deposits will be removed from the receiving stream) cannot be accomplished at this time. We have documentation that the adjacent property, otherwise known as the 'Coke works', could have significantly impacted the sedimentation deposits into the receiving stream. We understand these conditions have been discussed between WVARNG and WVDEP. TEDCO cannot agree to remediate the sediment deposits of the lower sediment pond, as the source of these deposits are by others and not in the control of TEDCO.

We are currently working on our submission for your approval for the prevention and control going forward until the project is completed. We plan to have this submitted according to the Consent Order within (20) working days of this correspondence.

Should you have any questions, please do not hesitate to call our offices.

Sincerely,

William Franczyk Jr.  
Vice President – Operations

Enclosure: ***Signed - WVDEP Consent Order Number 7526***

- cc: LTC David P. Shafer, WVARNG
- James Frantz, TEDCO
- Todd Anderson, TEDCO
- Don Jones, TEDCO
- Eric Brown, Brown's Excavating, Inc.



west virginia department of environmental protection

Environmental Enforcement  
601 57<sup>th</sup> 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

April 2, 2012

TEDCO Construction Corporation  
ATTN: William Franczyk  
TEDCO Place  
Carnegie, PA 15106

**CERTIFIED RETURN RECEIPT REQUESTED**  
91 7199 9991 7030 8528 2681  
**RE: Violation of Chapter 22, Article 11  
of the WV State Code**

Dear Mr. Franczyk:

Enclosed is revised CONSENT ORDER NUMBER 7526 dated April 2, 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 TEDCO Construction Corporation violating Chapter 22, Article 11 of the WV State Code at a facility located in Fairmont, Marion County, West Virginia. This revision is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer. 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)  
Brad Swiger, Environmental Inspector Supervisor, EE/WW (via e-mail)  
Jason Ely, Environmental Inspector, EE/WW (via e-mail)  
Shyrel Moellendick, MSSS, EE (via e-mail)  
LTC David P. Shafer, WVARNG (via e-mail)

**RECEIVED**

APR 04 2011

TEDCO CONSTRUCTION



---

west virginia department of environmental protection

---

Division of Water and Waste Management  
601 57<sup>th</sup> 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](http://www.dep.wv.gov)

**CONSENT ORDER  
ISSUED UNDER THE  
WATER POLLUTION CONTROL ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: TEDCO Construction Corporation  
ATTN: William Franczyk  
TEDCO Place  
Carnegie, PA 15106

DATE: April 2, 2012

ORDER NO.: 7526

**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 TEDCO Construction Corporation (hereinafter "TEDCO").

**FINDINGS OF FACT**

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

1. TEDCO operates a construction site with land disturbance located near The Drive in Fairmont, Marion County, West Virginia. West Virginia Army National Guard (WVARNG) was issued WV/NPDES General Water Pollution Control Permit for Stormwater associated with construction activities (WV0115924), General Permit Registration No. WVR105089, on July 23, 2010 with an expiration date of December 4, 2012. This permit is for 33 acres of disturbance.
2. On May 25, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the TEDCO construction site. During the inspection, the following violations of the terms and conditions of the WVARNG's WV/NPDES permit were observed and documented:

- a. TEDCO allowed sediment-laden water to leave the site without going through an appropriate device, a violation of Section G.4.e.2.A.ii.j of the WV/NPDES permit. Notice of Violation (NOV) NW-JME-052511-001 was issued.
  - b. TEDCO failed to operate and maintain all erosion and sediment control devices, a violation of Section D.1 of the WV/NPDES permit. NOV NW-JME-052511-002 was issued.
  - c. TEDCO failed to properly protect the inlets of sediment trapping structures, a violation of Section G.4.e.2.A.ii.c of the WV/NPDES permit. NOV NW-JME-052511-003 was issued.
  - d. TEDCO failed to stabilize diversions prior to becoming functional, a violation of Section G.4.e.2.A.ii.d of the WV/NPDES permit. NOV NW-JME-052511-004 was issued.
3. On July 7, 2011, WVDEP personnel conducted an inspection of the TEDCO construction site. During the inspection, the following violations of the terms and conditions of WVARNG's WV/NPDES permit were observed and documented:
- a. TEDCO failed to implement erosion and sediment control devices, a violation of Section G.4.e.2 of the WV/NPDES permit. NOV NW-JME-070711-001 was issued.
  - b. TEDCO failed to operate and maintain all erosion and sediment control devices, a violation of Section D.1 of the WV/NPDES permit. NOV NW-JME-070711-002 was issued.
  - c. TEDCO failed to properly protect the inlets of sediment trapping structures, a violation of Section G.4.e.2.A.ii.c of the WV/NPDES permit. NOV NW-JME-070711-003 was issued.
  - d. TEDCO failed to stabilize diversions prior to becoming functional, a violation of Section G.4.e.2.A.ii.d of the WV/NPDES permit. NOV NW-JME-070711-004 was issued.
  - e. TEDCO failed to temporarily seed and mulch all areas where construction activities have ceased for more than seven (7) days, a violation of Section G.4.e.2.A.i of the WV/NPDES permit. NOV NW-JME-070711-005 was issued.
  - f. TEDCO failed to comply with the approved Storm Water Pollution Prevention Plan (SWPPP), a violation of Section B of the WV/NPDES permit. NOV NW-JME-070711-006 was issued.
4. On October 21, 2011, WVDEP personnel conducted an inspection of the TEDCO construction site. During the inspection, the following violations of the terms and conditions of WVARNG's WV/NPDES permit were observed and documented:
- a. TEDCO failed to stabilize diversions prior to becoming functional, a violation of Section G.4.e.2.A.ii.d of the WV/NPDES permit. NOV NW-JME-102111-002 was issued.
  - b. TEDCO failed to operate and maintain all erosion and sediment control devices, a violation of Section D.1 of the WV/NPDES permit. NOV NW-JME-102111-001 was issued.

- c. TEDCO failed to temporarily seed and mulch all areas where construction activities have ceased for more than seven (7) days, a violation of Section G.4.e.2.A.i of the WV/NPDES permit. NOV NW-JME-102111-003 was issued.
  - d. TEDCO allowed sediment-laden water to leave the site without going through an appropriate device, a violation of Section G.4.e.2.A.ii.j of the WV/NPDES permit. NOV NW-JME-102111-004 was issued.
5. On March 23, 2012, WVDEP and TEDCO and WVARNG representatives met to discuss the terms of this Order. TEDCO and WVARNG presented documentation which mutually requested that TEDCO be issued this Order as the responsible party due to its role as the Operator with control over the construction site.

### 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. TEDCO shall immediately take all measures to initiate compliance with all pertinent laws/rules and the requirements of this Order.
2. Within seven (7) days of entry of this Order, TEDCO shall temporarily cover all disturbed areas in which construction has ceased for more than seven (7) days.
3. Within seven (7) days of entry of this Order, TEDCO shall repair, operate and maintain all sediment and erosion control devices on site according to the SWPPP associated with the WV/NPDES permit for this site. All sediment and erosion control devices are to be properly maintained until project completion and a Notice of Termination (NOT) inspection has been approved by the WVDEP.
4. Within twenty (20) days of entry of this Order, TEDCO shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when TEDCO will achieve compliance with all terms and conditions of the WV/NPDES permit for this site. The plan of corrective action shall also describe the following:
  - a. TEDCO's plan to prevent/control the release of sediment/sediment-laden water from its construction site.
  - ~~b. TEDCO's schedule and timeline for how and when sediment deposits will be removed from the receiving stream.~~

The plan of corrective action shall be submitted to:

**Environmental Inspector Supervisor  
NW Regional Environmental Enforcement Office  
2031 Pleasant Valley Road, Suite #1  
Fairmont, WV 26554**

A copy of this plan shall be submitted to:

04.10.12  
YMA 5-24-12

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> 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.

5. Because of TEDCO's violations, TEDCO shall be assessed a civil administrative penalty of twenty-six thousand three hundred thirty dollars (\$26,330) to 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. 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

**OTHER PROVISIONS**

1. TEDCO 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, TEDCO 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, TEDCO 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 TEDCO 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, TEDCO 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 TEDCO 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 TEDCO 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 TEDCO (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 TEDCO 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 TEDCO 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 TEDCO, its successors and assigns.
7. This Order shall terminate upon TEDCO's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
\_\_\_\_\_  
William Franczyk  
TEDCO Construction Corporation

04.10.12  
\_\_\_\_\_  
Date

Public Notice begin: \_\_\_\_\_  
Date

Public Notice end: \_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date



Photo 1

Erosion control devices (check dams and sediment deltas) in disrepair



Photo 2



Photo 3

Insufficient inlet protection at sediment pond #1



Photo 4

No diversion established to sediment pond #1



Photo 5

Dikes at sediment pond #1 and #2 are not properly stabilized



Photo 6



Photo 7

Diversions leading to sediment pond #1 not stabilized



Photo 8



Photo 9



Photo 10

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: TEDCO Construction Corporation Receiving Stream: UT of Mon. River

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#												
			2a	2b	2c	2d	3b	3c	3d	3e	3f	4a	4b	4c	4d
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1	1
b)	Toxicity of Pollutant	0 to 3	0	0	0	0	0	0	0	0	0	0	0	0	0
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1	1
d)	Length of Time	1 to 3	1	1	1	1	2	2	2	1	1	3	3	2	2
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1	1
<b>Average Potential for Harm Factor</b>			0.8	0.8	0.8	0.8	1	1	1	0.8	0.8	1.2	1.2	1	1
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	2	2	3	2	2	3	2	2	3	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  $\leq 40\%$  for Avg. Monthly or  $\leq 100\%$  for Daily Max., exceed numeric WQ standard by  $\leq 100\%$ , or report doesn't contain some minor information.

**Moderate** = exceedance of permit limit by  $\geq 41\%$  and  $\leq 300\%$  for Avg. Monthly,  $\geq 101\%$  and  $\leq 600\%$  for Daily Max., exceed numeric WQ standard by  $\geq 101\%$  and  $\leq 600\%$  or report doesn't fully address intended subject matter.

**Major** = exceedance of permit limit by  $\geq 301\%$  for Avg. Monthly,  $\geq 601\%$  for Daily Max., exceed numeric WQ standard by  $\geq 601\%$ , 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
2a	Minor	Major	\$1,900	1	\$1,900
2b	Minor	Major	\$1,900	1	\$1,900
2c	Minor	Moderate	\$1,400	1	\$1,400
2d	Minor	Moderate	\$1,400	1	\$1,400
3b	Minor	Major	\$2,000	1	\$2,000
3c	Minor	Moderate	\$1,500	1	\$1,500
3d	Minor	Moderate	\$1,500	1	\$1,500
3e	Minor	Major	\$1,900	1	\$1,900
3f	Minor	Moderate	\$1,400	1	\$1,400
4a	Moderate	Moderate	\$3,200	1	\$3,200
4b	Moderate	Major	\$4,200	1	\$4,200
4c	Minor	Major	\$2,000	1	\$2,000
4d	Minor	Major	\$2,000	1	\$2,000
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
<b>Total Base Penalty</b>					<b>\$26,300</b>

## 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		\$2,630
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	(\$2,630)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$30</b>
<b>Penalty =</b>			<b>\$26,330</b>

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	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b>	