

3. On February 24, 2011, WVDEP sent a letter to WVDOT stating that the WVDEP had not received a remediation proposal or an Underground Injection Control Permit application for review and approval.
4. On May 26, 2011, WVDEP issued ORDER NO. 7287, which required WVDOT to:
 - a. Immediately take measures to initiate compliance with all pertinent laws and/or rules.
 - b. Within thirty (30) days of the date of entry of the Order, either:
 - i. Submit a remediation proposal for the sinkhole, or
 - ii. Submit an Underground Injection Control Permit application to:

**WVDEP-Stormwater and Groundwater/UIC Team
Attn: William Timmermeyer
601 57th Street SE
Charleston, WV 25304**

A copy of either document should have also been submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
60157th Street SE
Charleston, WV 25304**

5. On August 8, 2011, it was determined that WVDOT had failed to respond to ORDER NO. 7287, because neither a remediation proposal for the sinkhole nor an Underground Injection Control Permit Application had been received by the WVDEP. This is a violation of Chapter 22, Article 11, Section 16 of the WV State Code, and Notice of Violation No. 111-28-001-JWB was issued to WVDOT.
6. On November 2, 2011, WVDEP personnel and representatives of WVDOT met to discuss the terms and conditions of this Order.
7. On February 7, 2012, WVDEP personnel received correspondence from a representative of WVDOT which included the following assertions concerning this Order:
 - a. WVDEP's September 20, 2010 investigative response to the citizen's complaint verified that a sinkhole was present adjacent to the complainant's property on WVDOT's permanent drainage easement.
 - b. Direction of stormwater into the sinkhole by WVDOT was part of the design of Route 460 in the 1970s at a time when such discharge was not regulated by WVDEP.
 - c. WVDOT has been meeting internally since at least March 2010 to determine an appropriate approach for addressing issues at this location and to discuss various funding mechanisms available. Such early assessments included at least two site visits conducted in April and October 2010.

- d. On December 1, 2010, WVDOT staff contacted WVDEP to discuss various proposals for addressing the sinkhole.
- e. On April 17, 2011, WVDOT conducted a site visit of the sinkhole to further review site conditions and remediation strategies.
- f. During the November 2, 2011 meeting between WVDEP personnel and representatives of WVDOT, it was determined that significant subsurface and other investigation will need to occur in the area of the drainage easement to properly implement effective remediation measures.
- g. On November 29, 2011, at the request of WVDEP, WVDOT met with the citizen complainant to coordinate and discuss draft remediation proposals for the area of the drainage easement. The citizen complainant declined to allow WVDOT access to his property for the purpose of investigation and implementation of any site remediation plans without assurances that were either constitutionally prohibited or commercially impractical.
- h. On January 10, 2012, WVDOT provided notice to the citizen complainant that it will be entering his property pursuant to the terms of WV Code §54-1-3a to perform investigatory work necessary to determine what portion, if any, of complainant's property may be necessary for a taking and to comply with the State's UIC program.
- i. On February 7, 2012, WVDOT submitted a Class 5 UIC Permit application to WVDEP for review.
- j. Investigation of site conditions in the vicinity of the drainage easement and sinkhole are currently being performed by WVDOT for the purpose of developing a site remediation proposal.

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. WVDOT shall immediately take measures to initiate compliance with all pertinent laws and/or rules.
2. Because of WVDOT's West Virginia Code and Legislative Rule violations, WVDOT shall be assessed a civil administrative penalty of thirteen thousand four hundred seventy dollars (\$13,470) 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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. **WVDOT 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, WVDOT 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, WVDOT 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 WVDOT 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, WVDOT 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 WVDOT 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 WVDOT 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 WVDOT (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 WVDOT 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 WVDOT 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 WVDOT, its successors and assigns.**

7. This Order shall terminate upon WVDOT's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Marvin Murphy, State Highway Engineer
WV Department of Transportation-Division of Highways

4-17-12
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date



APR 20 2012

ENVIRONMENTAL
ENFORCEMENT

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

Date

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: WVDOT Receiving Stream: N/D

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#											
			1	5										
a)	Amount of Pollutant Released	1 to 3	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1										
d)	Length of Time	1 to 3	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	2	2										
Average Potential for Harm Factor			1.2	1.2	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 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 <=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
1	Moderate	Major	\$4,200	1	\$4,200
5	Moderate	Major	\$4,200	1	\$4,200
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
Total Base Penalty					\$8,400

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 -	30		\$2,520
6.2.b.4 - Compliance/noncompliance history	35		\$2,940
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		5	(\$420)
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$5,070
Penalty =			\$13,470

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:	