west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11

TO: Mr. Rodney LeRose
T & R Investments, Inc.
2021 Webster Road
Summersville, WV 26651

DATE: August 3, 2012

ORDER NO.: 7195

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 T & R Investments, Inc. (hereinafter "T&R").

FINDINGS OF FACT

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

1. T&R operates a construction storm water site located adjacent to Route 41, Summersville, Nicholas County, West Virginia. T&R was issued WV/NPDES Water Pollution Control Permit No. WV0115924, General Permit Registration No. WVR103912 on September 30, 2008.

2. On July 21, 2009, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection the following violations of WV Legislative Rule and the terms and conditions of T&R's permit were observed and documented:

   a. Silt fencing is not properly installed on this site (Section D.1).
   b. Sediment traps are not properly installed on this site (Section D.1).
   c. Sediment basins are not properly constructed (Section D.1).
   d. Disturbed areas are not properly seeded and mulched, (Section G.4.e.2.A.i).

e. The majority of this site had been cleared and grubbed prior to the installation of sediment and erosion controls, in violation of the schedule of construction as outlined in permit application WVR103912, Attachments No.1 and No. 3 (Section G.4.e.2.).
f. Permittee has caused conditions not allowable in State waters by allowing sediment deposits on the bottom of the stream, in violation of Legislative Rule Title 47, Series 2, Section 3.2.b. (47CSR2-3.2.b).
g. Permittee has violated 33CSR1-7.1.a., as referenced by Section G.4.e.2.C.i of the permit, in that T&R has created/allowed to exist an open dump on the permitted site.

As a result of the aforementioned violations, Notice of Violation (NOV) No. I09-34-090721-4-JKL was issued to T&R.

3. On July 23, 2010, WVDEP personnel conducted an inspection of the facility. During the inspection the following violations of WV Legislative Rule and the terms and conditions of T&R's permit were observed and documented:

a. Silt fencing is not being properly maintained on this site (Section D.1).
b. There are large disturbed areas that on this property that have been left unstabilized for extended periods of time (Section G.4.e.2.A.i).
c. Rock ditch checks are not being properly maintained (Section D.1).
d. Sediment basins No. 1 and No. 2 are not being properly maintained (Section D.1).
e. Uncontrolled runoff from disturbed areas was bypassing sediment basin No. 2 and discharging into the receiving stream (Section G.4.e.2.A.ii.j).
f. No outlet markers are posted (Section C.15).
g. No entrance sign is posted for this project (Section G.4.b.).
h. Sediment basin No. 3 has not been constructed prior to the disturbance of property up gradient of its proposed location (Section G.4.e.2.).
i. Permittee has failed to document inspection of onsite sediment and erosion control measures, and of a tracking procedure to insure that adequate corrective actions have been taken in response to the deficiencies identified during those inspections (Section G.4.e.2.C.v).

As a result of the aforementioned violations, NOV No. I10-34-100723-1 was issued to T&R.

4. On November 8, 2010, WVDEP personnel conducted an inspection of the construction site. During the inspection, the following violations of the terms and conditions of T & R's WV/NPDES permit and WV Legislative Rule were observed and documented:

a. Onsite silt fencing has not been properly maintained (Section D.1.).
b. There are large disturbed areas on this property that have been left unstabilized for extended periods of time (Section G.4.e.2.A.i.).
c. Rock ditch checks are not being properly maintained (Section D.1.).
d. Sediment control basins are not being properly maintained (Section D.1.).
e. Various sediment control structures throughout this site are not being properly maintained (Section D.1.).
f. Slope drains and sediment pond outlet protection has not been installed in a timely manner to prevent erosion (Section G.4.e.2.A.ii.).

g. Permittee has failed to temporarily seed and mulch disturbed areas within 7 days (Section G.4.e.2.A.i.).
h. Sediment beds are present in the receiving stream downgradient of this site (47 CSR 2, Section 3.2.b.).

As a result of the aforementioned violations, NOV No. 10W-34-110810-2 was issued to T & R.

5. A meeting between WVDEP and T&R was held on February 18, 2011 to discuss the terms 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. T&R shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.

2. Within thirty (30) days of entry of this Order, T&R shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when T&R will achieve compliance with all terms and conditions of its WV/NPDES permit and/or pertinent laws and rules. The plan of corrective action shall be submitted to:

Environmental Inspector Supervisor
SE Regional Environmental Enforcement Office
254 Industrial Drive
Oak Hill, WV 25901

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 T&R's Legislative Rule and permit violations, T&R shall be assessed a civil administrative penalty of twenty-eight thousand five hundred ninety dollars ($28,590) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

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 T&R 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 T&R 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 T&R, its successors and assigns.

7. This Order shall terminate upon T&R's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Mr. Rodney LeRose
T&R Investments, Inc.

8/8/12
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

revised April 2010

RECEIVED
AUG 09 2012
ENVIRONMENTAL
ENFORCEMENT

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T & R Investments, Inc, July 21st, 2009

Improperly installed silt fencing.

Area where Pond No. 1 should be located, but had not been constructed.

Area where Pond No. 2 should be located, but had not been constructed.

Disturbed areas not properly seeded and mulched.

Conditions not allowable in state waters, sediment deposits in stream.

Open dump present on site.

Open dump present on site.

Open dump present on site.

T & R Investments, Inc, July 23rd, 2010

Large unstabilized areas present on site.

Sediment Basin No. 1 not being properly maintained.

Sediment Basin No. 2 not being properly maintained.

Uncontrolled storm water runoff bypassing Pond No. 2 and discharging to stream.

Area where Pond No. 3 should be located, but had not been constructed.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: T&R Investiments **Receiving Stream:** Tributary of Muddlety Creek

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.

			FOF#												
1)	**Potential for Harm Factor**	**Factor Range**	3a, 3c, 3d, 4a,4c,4	3b,4b	3e	3f,3g	3h	3i	4f	4g	4h				
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1				
b)	Toxicity of Pollutant	0 to 3	1	1	1	0	1	1	1	1	1				
c)	Sensitivity of the Environment	0 to 3	1	1	1	0	1	1	1	1	1				
d)	Length of Time	1 to 3	3	3	1	1	2	1	1	1	1				
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	0	1	1	1	1	1				
	Average Potential for Harm Factor		1.4	1.4	1	0.4	1.2	1	1	1	1	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3	2	2	3	1	3	1	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.

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
3a, 3c, 3d, 4a,4c,4d,4e	Moderate	Moderate	$3,400	2	$6,800
3b,4b	Moderate	Moderate	$3,400	2	$6,800
3e	Minor	Major	$2,000	1	$2,000
3f,3g	Minor	Minor	$400	1	$400
3h	Moderate	Major	$4,200	1	$4,200
3i	Minor	Minor	$1,000	1	$1,000
4f	Minor	Major	$2,000	1	$2,000
4g	Minor	Major	$2,000	1	$2,000
4h	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
0	FALSE	FALSE	FALSE	1	$0
Total Base Penalty					$27,200

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 -	15		$4,080
6.2.b.4 - Compliance/noncompliance history	10		$2,720
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	($2,720)
6.2.b.3 - Cooperation with the Secretary		10	($2,720)
6.2.b.5 - Ability to Pay			$0
Penalty Adjustments			**$1,390**
Penalty =			**$28,590**

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	$600
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	**$600**

Comments: Assume to seed & mulch needed on 10 acres @ $60/acre = $600.