



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: WV Division of Veterans Affairs
Attn: Larissa Wines
1321 Plaza East, STE 109
Charleston, WV 25301

DATE: May 1, 2012
ORDER NO.: 7571

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 WV Division of Veterans Affairs (hereinafter "WVVA").

FINDINGS OF FACT

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

1. WVVA operates a land disturbance associated with construction activity, referred to as Donel Kinnard Memorial State Veterans Cemetery, located in Institute, Kanawha County, West Virginia. WVVA was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR105031, on June 29, 2010.
2. On October 19, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, a violation of the following section of WVVA's WV/NPDES permit was observed and documented:
 - a. G.4.b.5.-Permittee failed to display a public notice sign at or near the entrance to the site. Construction had not yet begun; however, the required entrance sign was not posted.

As a result of the aforementioned violation, Notice of Violation (NOV) No. I10-20-007-JCC was issued to WVVA.

Promoting a healthy environment.

3. On February 2, 2011, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WVVA's WV/NPDES permit were observed and documented:
 - a. B-Permittee failed to comply with the General permit and approved Storm Water Pollution Prevention Plan (SWPPP). Several sediment and erosion control devices, including the clean water diversion routed to the maintenance area sediment trap and check dams throughout the site, were not in place as detailed by the SWPPP.
 - b. G.4.e.2.A.ii.c.-Permittee failed to provide inlet and outlet protection of sediment control structures.
 - c. C.15.-Permittee failed to post an outlet marker at all permitted outlets from the construction site.
 - d. G.4.e.2.C.i.-Permittee openly burned solid waste on the permitted site.
 - e. G.4.c.-Permittee failed to modify the SWPPP when there was a change in design, construction or scope of the project. The spoil area, change in the outlet structure of Trap No. 2, and a temporary stream crossing detail were not included in the approved plans.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. 111-20-001-JCC through 111-20-005-JCC were issued to WVVA.

4. On April 21, 2011, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rule and WVVA's WV/NPDES permit were observed and documented:
 - a. D.1.-Permittee failed to properly operate and maintain all erosion control devices, including silt fence, berms, culverts, and diversions in numerous locations throughout the site.
 - b. B-Permittee failed to comply with the General Permit and approved SWPPP. Several sediment and erosion control devices were not in place as detailed in the SWPPP, including ditch checks with sumps along the Academy Drive access road.
 - c. G.4.c.-Permittee failed to modify the SWPPP when there was a change in design, construction or scope of the project. The spoil area and the change in outlet structure of Trap No. 2 were not included in the approved plans.
 - d. G.4.e.2.A.ii.j.-Permittee allowed sediment laden water to leave the site without going through an appropriate device. The following were lacking: silt fence maintenance in several areas, controls around the added culvert near box culvert No. 1, controls around the partially installed box culvert No. 4, berms along the clean water diversions down Academy Drive access road and the culvert under the spoil area access road, and controls for the added diversion near the committal area sediment trap.
 - e. 47CSR2-3.2.b-Permittee caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the stream in the area of the partially installed box culvert No. 4.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. 111-20-014-JCC through 111-20-018-JCC were issued to WVVA.

5. On June 22, 2011, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WVVA's WV/NPDES permit were observed and documented:
- a. G.4.c-Permittee failed to modify the SWPPP when there was a change in design, construction or scope of the project. The spoil area and the change in outlet structure of Trap No. 2 were not included in the approved plans.
 - b. G.4.e.2.A.i.d.-Permittee failed to seed and stabilize all temporary diversions immediately and prior to becoming functional, including the diversion along the Academy Drive access road.
 - c. B-Permittee failed to comply with the General permit and approved SWPPP. Several sediment and erosion control devices, including ditch checks down the Academy Drive diversion, the berm above the clean water diversion culvert under the spoil area access road, and protections for the Academy Drive clean water diversion and culvert, were not in place as detailed in the SWPPP.
 - d. G.4.e.2.A.ii.j.-Permittee allowed sediment laden water to leave the site without going through an appropriate device. This violation was observed throughout the Academy Drive road and spoil area road clean water diversions.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. I11-20-024-JCC through I11-20-027-JCC were issued to WVVA.

6. On January 18, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rule and WVVA's WV/NPDES permit were observed and documented:
- a. B-Permittee failed to comply with the General permit and approved SWPPP. Several sediment and erosion control devices were not in place as detailed in the SWPPP, including drop inlet protections and ditch checks in the diversions along the road through the Burial area and the Northwest area.
 - b. 47CSR2-3.2.b-Permittee caused or contributed to Conditions Not Allowable in State Waters by creating sediment deposits on the bottom of the stream.
 - c. 47CSR2-3.2.a-Permittee caused or contributed to Conditions Not Allowable in State Waters by creating distinctly visible settleable solids in the receiving stream.
 - d. G.4.e.2.A.ii.f.-Permittee did not protect fill slopes, because it failed to implement measures to divert runoff from fill slopes in the Northwest area of the project.
 - e. D.1.-Permittee failed to properly operate and maintain all sediment and erosion control devices. Deficiencies were observed in the silt fence near the head of box culverts Nos. 6, 4, and 3, near the end of box culvert No. 4, and along the stream below box culvert No. 44.
 - f. G.4.e.2.A.ii.j.-Permittee allowed sediment laden water to leave the site without going through an appropriate device. This violation occurred due to lack of drop inlet protections, lack of controls along the dump rock gutters in the Northwest and Burial areas, and the washing out of unprotected drop inlets by landscaping personnel along Academy Drive.
 - g. G.4.e.2.A.i.d.-Permittee failed to seed and stabilize all temporary diversions immediately and prior to becoming functional.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. I12-20-005-JCC through I12-20-011-JCC were issued to WVVA.

7. On April 25, 2012, WVDEP personnel and representatives of WVVA 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. WVVA 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 fifteen (15) days of the effective date of this Order, WVVA shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when WVVA will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Satellite 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.

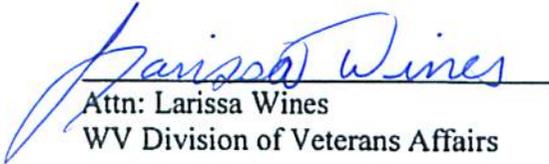
3. Because of WVVA's Legislative Rule and permit violations, WVVA shall be assessed a civil administrative penalty of fourteen thousand nine hundred ninety dollars (\$14,990) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within 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 be mailed to:**

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

OTHER PROVISIONS

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


Attn: Larissa Wines
WV Division of Veterans Affairs

8-9-12
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised September 2011

RECEIVED

AUG 13 2012

ENVIRONMENTAL
ENFORCEMENT

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: WV Division of Veterans Affairs Receiving Stream: Finney Branch, Tributary to Finney Branch

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#												
			6a	6b	6c	6d	6e	6f	6g						
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1						
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	1						
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1	1						
d)	Length of Time	1 to 3	3	1	1	1	2	3	2						
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1						
Average Potential for Harm Factor			1.4	1	1	1	1.2	1.4	1.2	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	2	3	3	2	2	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 -			\$0
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	(\$1,870)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,870)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$3,710)
Penalty =			\$14,990

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:	