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JUN 21 2012

west virginia department of environmental protection

ENVIRONMENTAL  
ENFORCEMENT

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

June 15, 2012

Webster Co. Economic Development Authority  
Attn. Gary Weir  
139 Baker St.  
Webster Springs, WV 26288

CERTIFIED RETURN RECEIPT REQUESTED

91 7199 9991 7030 8754 1274

RE: Violation of Chapter 22, Article 11  
of the WV State Code

Dear Mr. Weir:

Enclosed is revised CONSENT ORDER NUMBER 7538 dated June 15, 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 Webster Co. Economic Development Authority violating Chapter 22, Article 11 of the WV State Code at its facility located on Route 20, Webster 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)  
Kevin Lilly, Environmental Inspector Supervisor, EE/WW (via e-mail)  
John Hendley, Environmental Inspector, EE/WW (via e-mail)  
Shyrel Moellendick, MSSS, EE (via e-mail)

revised September 2011

Promoting a healthy environment.



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west virginia department of environmental protection

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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: Webster County Economic Development Authority  
Attn. Gary Weir  
139 Baker St.  
Webster Springs, WV 26288

DATE: June 15, 2012

ORDER NO.: 7538

**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 Webster County Economic Development Authority (hereinafter "Webster Co. EDA").

**FINDINGS OF FACT**

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

1. Webster Co. EDA operates a construction site located on Route 20, Webster County, West Virginia. Webster Co. EDA was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR105161, on September 2, 2010.
2. On July 26, 2011, 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 Webster Co. EDA's WV/NPDES Permit were observed and documented:
  - a. Permittee failed to seed and stabilize all temporary diversions immediately and prior to becoming functional at the Barrenshe road site and along the pipeline (Section G.4.e.2.A.i.d.).

- b. Permittee allowed sediment-laden water to leave the site without going through an appropriate device at the Barrenshe road site, creek crossing, drop inlet discharges and waste sites (Section G.4.e.2.A.ii.j.).
  - c. Permittee failed to temporary seed and mulch all areas where construction activities have ceased for more than seven (7) days at the Barrenshe road site (Section G.4.e.2.A.i.).
  - d. Permittee failed to retain a copy of the Stormwater Pollution Prevention Plan (SWPPP) and Groundwater Protection Plan (GPP) on site (Section G.4.a.).
  - e. Permittee failed to dispose of all solid waste/demolition material in accordance with the Code of West Virginia and Legislative Rule 33CSR1 (Section G.4.e.2.C.i.).
  - f. Permittee caused conditions not allowable in waters of the State by creating sediment deposits in Barrenshe road drainage and Grassy Creek near Grassy Creek Road and Rt. 15/20 (47CSR2 Section 3.2.b.).
3. On March 19, 2012, WVDEP personnel and representatives of Webster Co. EDA met to discuss the terms and conditions of this Order.
  4. On June 1, 2012, Webster Co. EDA submitted correspondence to WVDEP which included a Supplemental Environmental Project (SEP) proposal. In its SEP, Webster Co. EDA proposed to provide two thousand five hundred dollars (\$2,500) to the Town of Camden on Gauley for a clean-up project. Specifically, the payment from Webster Co. EDA would be used to cover the cost of dirt work to reclaim demolished building sites on Main Street. The SEP is an environmentally beneficial plan undertaken by Webster Co. EDA to mitigate a portion of the penalty assessed in 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. Webster Co. EDA shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and any pertinent laws and rules.
2. Within twenty (20) days of entry of this Order, Webster Co. EDA shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Webster Co. EDA will achieve compliance with all terms and conditions of its WV/NPDES permit and any pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP 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 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.

3. Webster Co. EDA shall complete the SEP according to the plan and schedule proposed in its June 1, 2012 correspondence. The approved SEP proposal shall be incorporated into and become part of this Order, as if fully set forth herein.
4. Within sixty (60) days after completion of the SEP, Webster Co. EDA shall submit an SEP Completion Report, listing expenditures and detailing all actions performed in regard to the SEP. The Report shall be mailed to the addresses contained within Order for Compliance No. 2. Failure to complete the SEP in accordance with the approved plan and schedule is a violation of this Order, and Webster Co. EDA shall be required to pay the penalties stipulated in Order for Compliance No. 5.
5. Because of Webster Co. EDA's WV Legislative Rule and permit violations, Webster Co. EDA shall be assessed a civil administrative penalty of four thousand seven hundred fifty dollars (\$4,750) to be paid as follows:
  - a. Two thousand two hundred fifty dollars (\$2,250) shall 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.
  - b. The remaining two thousand five hundred dollars (\$2,500) shall be applied to the WVDEP approved SEP proposed by Webster Co. EDA on June 1, 2012. In the event that the SEP is not completed as proposed, the entire value placed upon the SEP shall become due and payable upon demand by WVDEP.

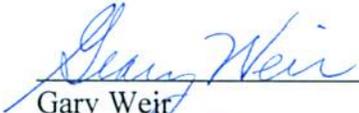
Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

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

### **OTHER PROVISIONS**

1. Webster Co. EDA 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, Webster Co. EDA 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, Webster Co. EDA 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 Webster Co. EDA 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, Webster Co. EDA 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 Webster Co. EDA 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 Webster Co. EDA 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 Webster Co. EDA (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 Webster Co. EDA 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 Webster Co. EDA 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 Webster Co. EDA, its successors and assigns.

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

  
\_\_\_\_\_  
Gary Weir  
Webster Co. EDA

6-20-12  
\_\_\_\_\_  
Date

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

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

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

\_\_\_\_\_  
Date

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Webster County Economic Development Authority Receiving Stream: Grassy Creek

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#													
			2a	2b	2d	2e	2f									
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	1	0	1	1									
c)	Sensitivity of the Environment	0 to 3	1	1	0	1	1									
d)	Length of Time	1 to 3	1	1	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	1	1	0	1	1									
<b>Average Potential for Harm Factor</b>			1	1	0.4	1	1	No								
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>														
	Degree of Non-Compliance	1 to 3	2	2	1	1	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	(\$590)
6.2.b.3 - Cooperation with the Secretary		10	(\$590)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>(\$1,150)</b>
<b>Penalty =</b>			<b>\$4,750</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>	



Photo 1



Photo 2



Photo 3



Photo 4



Photo 5



Photo 6



Photo 7



Photo 8



Photo 9



Photo 10



Photo 11



Photo 12



Photo 13



Photo 14