



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
Fax: (304) 926-0488

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
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: WV School of Osteopathic Medicine
Attn: Larry J. Ware, VP
400 N. Lee St.
Lewisburg, WV 24901

DATE: February 11, 2016

ORDER NO.: 8494

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. and Chapter 22, Article 12, Section 1 et seq. to WV School of Osteopathic Medicine.

FINDINGS OF FACT

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

1. WV School of Osteopathic Medicine is conducting land disturbance activity in Greenbrier County, West Virginia. WV School of Osteopathic Medicine was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106991, on May 2, 2014.
2. On June 23, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and the WV/NPDES permit were observed and documented:

- a. Section D.1 – The Permittee failed to operate and maintain all erosion control devices. Specifically, deficiencies were observed in regard to the silt fence, the drop inlet protection, and the sump near the entrance.
- b. Section G.4.e.1.E – The Permittee failed to provide an adequate stone access entrance/exit to reduce the tracking of sediment onto public or private roads.
- c. Section G.4.e.2.A.ii.j – The Permittee failed to prevent sediment-laden water from leaving the site without going through an appropriate device.
- d. 47CSR58 Section 4.7.d – The Permittee failed to store drums containing materials that have the potential to contaminate groundwater so that spills and leaks were contained.

As a result of the aforementioned violations, Notice of Violation (NOV) No. I15-13-007-JHH and I15-13-008-JHH were issued to WV School of Osteopathic Medicine.

3. On September 9, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of the WV/NPDES permit were observed and documented:
 - a. Section D.1 – The Permittee failed to operate and maintain all erosion control devices. Specifically, deficiencies were observed in regard to the silt fence, the trap outlet, the drop inlet protection, and the sump near the entrance.
 - b. Section G.4.e.1.E – The Permittee failed to provide an adequate stone access entrance/exit to reduce the tracking of sediment onto public or private roads.
 - c. Section G.4.e.2.A.ii.j – The Permittee failed to prevent sediment-laden water from leaving the site without going through an appropriate device.
 - d. Section G.2 – The Permittee failed to prohibit discharges of material other than storm water. Wet saw and concrete waste water were not separated from storm water on site.
 - e. Section G.4.d.1.B – The Permittee failed to keep a clean and orderly project. Trash and construction debris were noted in quantity on the site.
 - f. Section G.4.e.2.C.i – The Permittee failed to dispose of all solid waste/demolition material in accordance with WV State Code and WV Legislative Rule 33CSR1.

As a result of the aforementioned violations, NOV No. I15-13-014-JHH was issued to WV School of Osteopathic Medicine.

4. On September 28, 2015, WVDEP issued Order No. 8458 to WV School of Osteopathic Medicine in response to the aforementioned violations. The Order required WV School of Osteopathic Medicine to:
 - a. Immediately **cease & desist** any further land development activity until such time when compliance with the terms and conditions of its WV/NPDES permit and all pertinent laws and rules was achieved.
 - b. Within twenty (20) days of the effective date of the Order, submit for approval a proposed plan of corrective action (POCA).
 - c. Immediately install and maintain necessary storm water and sediment/erosion control devices to prevent the release of sediment-laden water into waters of the State and temporarily mulch all disturbed areas.

5. On October 28, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and the terms and conditions of WV School of Osteopathic Medicine's WV/NPDES permit were observed and documented:
 - a. Section D.1 – WV School of Osteopathic Medicine failed to operate and maintain all erosion control devices. Specifically, there was an inadequate sediment trap outlet and maintenance for drop inlet protection on the southwest side.
 - b. Section B – WV School of Osteopathic Medicine failed to comply with the approved Storm Water Pollution Prevention Plan (SWPPP). Specifically, several erosion control devices, including diversions to carry storm water to the sediment trapping structure, were not in place.
 - c. Section G.4.e.2.A.ii.j – WV School of Osteopathic Medicine failed to prevent sediment-laden water from leaving the site without going through an appropriate device. Specifically, evidence of sediment-laden water was noted in two receiving storm sewer inlets.
 - d. Section G.2 – WV School of Osteopathic Medicine failed to prohibit discharges of material other than storm water. Specifically, concrete waste water was not separated from storm water on site.
 - e. Section G.4.d.1.B – WV School of Osteopathic Medicine failed to keep a clean and orderly project. Specifically, a quantity of trash and construction debris was inside and on top of storm water Best Management Practices (BMPs).
 - f. Section G.4.e.2.C.i – WV School of Osteopathic Medicine failed to dispose of all solid waste/demolition material in accordance with WV State Code and WV Legislative Rule 33CSR1.
 - g. 22-11-1 et seq. – WV School of Osteopathic Medicine failed to comply with the terms and conditions of Order No. 8458. Specifically:
 - i. Land development activity had not ceased as required by Order for Compliance No. One (1).
 - ii. A POCA had not been submitted as required by Order for Compliance No. Two (2).

As a result of the aforementioned violations, NOV No. I15-13-016-JHH was issued to WV School of Osteopathic Medicine.

6. On January 27, 2016, WVDEP personnel met with representatives of the WV School of Osteopathic Medicine to discuss the terms and conditions of the Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. WV School of Osteopathic Medicine 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 twenty (20) days of the effective date of this Order, WV School of Osteopathic Medicine shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when WV School of Osteopathic Medicine will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0115924, Registration No. WVR106991, and Order Nos. 8458 and 8494. 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 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 WV School of Osteopathic Medicine's West Virginia Code and permit violations, WV School of Osteopathic Medicine shall be assessed a civil administrative penalty of thirty-nine thousand thirty-eight dollars (\$39,038) 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 include a reference to the Order No. and shall be mailed to:**

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

OTHER PROVISIONS

1. WV School of Osteopathic Medicine hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia. Under this Order, WV School of Osteopathic Medicine 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, WV School of Osteopathic Medicine 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 WV School of Osteopathic Medicine 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, WV School of Osteopathic Medicine 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 WV School of Osteopathic Medicine becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and WV School of Osteopathic Medicine 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 WV School of Osteopathic Medicine 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 WV School of Osteopathic Medicine (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 WV School of Osteopathic Medicine 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 WV School of Osteopathic Medicine 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 WV School of Osteopathic Medicine, its successors and assigns.
7. This Order shall terminate upon WV School of Osteopathic Medicine's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Larry J. Ware, VP
WV School of Osteopathic Medicine

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date