



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

Harold D. Ward, Cabinet Secretary
dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE CHAPTER 22, ARTICLE 11**

TO: Mountaineer Trout Farm, LLC
Attn: Colleen Miller
300 Pickshin Hollow
PO Box 96
Josephine, WV 25857

DATE: April 25, 2022

ORDER NO.: 10028

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 22-11-1 et seq. to Mountaineer Trout Farm, LLC (hereinafter "MTF").

FINDINGS OF FACT

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

1. MTF operates a trout farm located in Josephine, Raleigh County, West Virginia. MTF was reissued WV/NPDES Water Pollution Control Permit No. WV0116335 on June 8, 2020.
2. On May 25, 2021, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia State Code, West Virginia Legislative Rules, and the WV/NPDES permit were observed and documented:
 - a. 22-11-8(b)(2) - MTF made eight (8) outlets for the discharge of process wastewater effluent into waters of the state without an authorized WV/NPDES permit.

- b. Section C.1 - MTF failed to practice good housekeeping. Specifically, there were scattered parts, equipment, and debris throughout the facility.
- c. Section C.8 - MTF did not perform sampling at Outlet No. 001 during cleaning of the raceways used to raise trout to stockable size.
- d. Section C.9 - MTF did not take representative composite samples consisting of at least four (4) grab samples collected during the raceways cleaning operations.
- e. Section C.13 - MTF did not have a groundwater protection plan.
- f. Section C.14 - MTF did not have a stormwater pollution prevention plan.
- g. Section C.15 - MTF did not have a best management practice plan.
- h. Appendix A.I.13 - MTF did not have a marker at Outlet No. 001.
- i. Appendix A.II.1 - MTF failed to properly operate and maintain the facility. Specifically, there were multiple leaks on the south side of the raceway, and suspended solids were present in the receiving stream, which indicated the raceway was not cleaned as required.
- j. 47CSR2 Section 3.2.a - MTF caused conditions not allowable in state waters. Specifically, distinctly visible solids were observed below Outlet No. 001.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W21-41-042-KM, W21-41-043-KM, W21-41-044-KM, and W21-41-045-KM were issued to MTF.

3. On September 9, 2021, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia State Code and the WV/NPDES permit were observed and documented:
- a. Section C.1 - MTF failed to practice good housekeeping, including maintaining the facility grounds.
 - b. Section C.8 - MTF failed to perform sampling at Outlet No. 001 during cleaning of the raceways used to raise trout to stockable size.
 - c. Section C.9 - MTF failed to take a composite sample consisting of at least four (4) grab samples collected during the duration of the raceways cleaning operations.
 - d. Section C.14 - MTF failed to implement and maintain a Stormwater Pollution Prevention Plan (SWPPP) for this site. Specifically:
 - i. MTF failed to implement employee training programs to inform personnel of the components and goals of SWPPP.
 - ii. MTF failed to conduct visual inspections at this facility.
 - iii. MTF failed to keep a record of inspections, maintenance activities, and any corrective actions.
 - iv. MTF failed to identify areas where spills could occur and failed to have proper procedures and equipment to implement a cleanup.
 - e. Section C.15 – MTF failed to implement and maintain a Best Management Practice (BMP) Plan at this facility.
 - f. Appendix A.II.1 - MTF failed to properly operate and maintain the facility. Specifically, multiple leaks on the south side of the raceway indicated failure to maintain the integrity of the facility's process water holding tanks. Additionally, biosolids from the cleaning of the fish raceways were being stored on-site, without an established plan for proper disposal.

- g. 22-11-8(b)(2) - MTF made outlets for the discharge of process wastewater effluent into waters of the state without an authorized WV/NPDES permit. This facility had five (5) unpermitted discharge locations. Two (2) unpermitted discharge points were observed on the northeast side of the facility, behind the hatchery. Three (3) unpermitted discharge points were observed on the south side of the raceway. The integrity of the structure was failing at multiple locations, allowing process water to exit the tanks.

As a result of the aforementioned violations, NOV Nos. W21-41-081-KM, W21-41-082-KM, and W21-41-083-KM were issued to MTF.

4. On February 2, 2022, WVDEP personnel and representatives of MTF met to discuss the terms and conditions of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with West Virginia State Code 22-11-1 et seq., it is hereby agreed between the parties, and ORDERED by the Director:

1. MTF 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 thirty (30) days of the effective date of this Order, MTF shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when MTF 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. WV0116335 and Order No. 10028. The plan of corrective action 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 MTF's West Virginia Code, Legislative Rule and permit violations, MTF shall be assessed a civil administrative penalty of thirty-three thousand two hundred thirty dollars (\$33,230) 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. MTF hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21. Under this Order, MTF 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, MTF 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 MTF 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, MTF 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 MTF becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and MTF 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 MTF 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 MTF (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 MTF 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 MTF 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 MTF, its successors and assigns.
7. This Order shall terminate upon MTF's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Colleen Miller
Colleen Miller
Mountaineer Trout Farm, LLC

4-29-2022
Date

Public Notice begin:

Date

Public Notice end:

Date

Katheryn Emery, P.E., Director
Division of Water and Waste Management

Date

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Mountaineer Trout Farm, LLC **Receiving Stream:**

Stonecoal Creek/Guyandotte River

Treatment System Design Maximum Flow: 3.5 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	2c, 2d	2e	2f	2g	2h	2i	2j	3a	3b, 3c	3d	3e
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1	1
b)	Toxicity of Pollutant	0 to 3	1	1	0	0	0	0	0	1	1	1	0	0	0
c)	Sensitivity of the Environment	0 to 3	1	1	0	0	0	0	0	1	1	1	0	0	0
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	2	2	2	2
e)	Actual Exposure and Effects thereon	0 to 3	1	1	0	0	0	0	0	1	1	1	0	0	0
	Average Potential for Harm Factor		1	1	0.4	0.4	0.4	0.4	0.4	1	1	1.2	0.6	0.6	0.6
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	3	3	3	3	1	3	3	3	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 $\leq 40\%$ for Avg. Monthly or $\leq 100\%$ for Daily Max., exceed numeric WQ standard by $\leq 100\%$, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by $\geq 41\%$ and $\leq 300\%$ for Avg. Monthly, $\geq 101\%$ and $\leq 600\%$ for Daily Max., exceed numeric WQ standard by $\geq 101\%$ and $\leq 600\%$ or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by $\geq 301\%$ for Avg. Monthly, $\geq 601\%$ for Daily Max., exceed numeric WQ standard by $\geq 601\%$, 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.

[illegible]

		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
2a	Minor	Major	\$2,000	1	\$2,000
2b	Minor	Major	\$2,000	1	\$2,000
2c, 2d	Minor	Major	\$1,700	1	\$1,700
2e	Minor	Major	\$1,700	1	\$1,700
2f	Minor	Major	\$1,700	1	\$1,700
2g	Minor	Major	\$1,700	1	\$1,700
2h	Minor	Minor	\$400	1	\$400
2i	Minor	Major	\$2,000	1	\$2,000
2j	Minor	Major	\$2,000	1	\$2,000
3a	Moderate	Major	\$4,200	1	\$4,200
3b, 3c	Minor	Major	\$1,800	1	\$1,800
3d	Minor	Major	\$1,800	1	\$1,800
3e	Minor	Major	\$1,800	1	\$1,800
3f	Moderate	Major	\$4,200	1	\$4,200
3g	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
Total Base Penalty					\$33,200

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 -	10		\$3,320
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	(\$3,320)
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$33,230

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: Economic benefit not warranted.	

Photo Attachment



5/25/2021 – View of the hatchery, including pipes to the floor drain leading to unpermitted outlet behind the building (northeast side of the facility).



5/25/2021 – Storage of fish food, next to storm water ditch.

Photo Attachment



5/25/2021 – Below Outlet 001.



5/25/2021 – Outlet Marker.

Photo Attachment



5/25/2021 – Discharge pipes on northeast side of the facility (behind hatchery).



5/25/2021 – Effluent pipe for Outlet 001, as well as overflow pipe for excess discharge.

Photo Attachment



5/25/2021 – Image of two unpermitted discharge points on the west end of the raceway.



5/25/2021 – Outlet 001 (metal pipe).

Photo Attachment



5/25/2021 – Receiving stream.



5/25/2021 – Evidence of raceway leak and path of flow on the south side of facility.

Photo Attachment



5/25/2021 – Closer view of raceway wall leak.



5/25/2021 – Evidence of process water escaping raceway on southside of the structure.

Photo Attachment



5/25/2021 – Path of process water from raceway traveling to waters of the state.



5/25/2021 – Continued path of process water from the raceway traveling to waters of the state.

Photo Attachment



5/25/2021 – View of the southside of the raceway, looking northeast.



5/25/2021 – Closer view of leaks from the raceway.

Photo Attachment

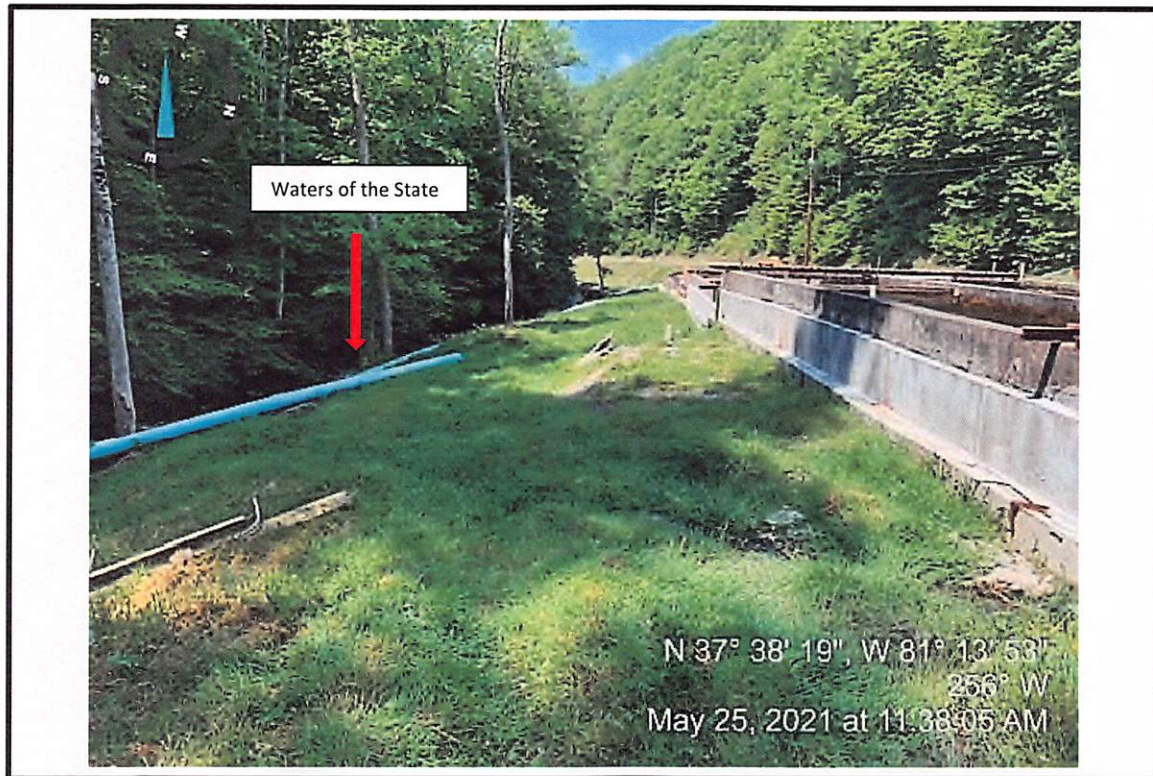


5/25/2021 – More evidence of process water escaping the raceway structure.



5/25/2021 – View of the southeast side of the raceway, looking west.

Photo Attachment



5/25/2021 – Proximity of the raceway to waters of the state.

Photo Log

Mountaineer Trout Farm, Inc. –WV0116335– September 9, 2021 – Raleigh County



9/9/2021 – Looking toward the west end of the facility and Outlet 001.



9/9/2021 – Looking northeast toward the hatchery and the beginning of the raceway.

Photo Log

Mountaineer Trout Farm, Inc. –WV0116335– September 9, 2021 – Raleigh County



9/9/2021 -Storage area.



9/9/2021 – General housekeeping.

Photo Log

Mountaineer Trout Farm, Inc. –WV0116335– September 9, 2021 – Raleigh County



9/9/2021 – Storage of fish food next to stormwater ditch.



9/9/2021 – Standing water and debris in large green storage containers.

Photo Log

Mountaineer Trout Farm, Inc. –WV0116335– September 9, 2021 – Raleigh County



9/9/2021 – Fish biosolids being stored on site.



9/9/2021 – Discharge pipes on northeast side of the facility (behind hatchery).

Photo Log
Mountaineer Trout Farm, Inc. –WV0116335– September 9, 2021 – Raleigh County



9/9/2021 – Effluent pipes for Outlet 001.



9/9/2021 – Previously, two unpermitted discharge points on the west end of the raceway.

Photo Log

Mountaineer Trout Farm, Inc. –WV0116335– September 9, 2021 – Raleigh County



9/9/2021 – View of the southside of the raceway, looking northeast.



9/9/2021 – Evidence of process water escaping raceway on southside of the structure.

Photo Log

Mountaineer Trout Farm, Inc. –WV0116335– September 9, 2021 – Raleigh County



9/9/2021 – Path of process water from raceway traveling to waters of the state.



9/9/2021 – Process water leak from southside of raceway.

Photo Log

Mountaineer Trout Farm, Inc. -WV0116335- September 9, 2021 - Raleigh County



9/9/2021 - Process water outside of the raceway structure.



9/9/2021 - Proximity of the raceway to waters of the state.