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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) 926-0470  
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Jim Justice, Governor  
Austin Caperton, 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: Slanes Property LLC  
Attn: Edward O Perman, III  
2425 Lumbley Road  
Rainbow City, AL 35906

DATE: November 28, 2017  
ORDER NO.: 8758

**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 Slanes Property LLC (hereinafter "Slanes Property").

**FINDINGS OF FACT**

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

1. Slanes Property is conducting land disturbance activity in Hampshire County, West Virginia.
2. On February 7, 2017, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, a violation of the following section of WV State Code was observed and documented:
  - a. 22-11-8(b)(1) -Land disturbance activity greater than one (1) acre was conducted without authorization pursuant to a WV/NPDES permit.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W17-14-007-MJA was issued.

3. On April 26, 2017, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and WV Legislative Rules were observed and documented:
  - a. 22-11-8(b)(1) -Pollutants were discharged from a land disturbance into waters of the State, an unnamed tributary of Maple Run, without authorization pursuant to a WV/NPDES permit.
  - b. 47CSR2 Section 3.2.a. – Conditions not allowable in waters of the State were caused by creating distinctly visible settleable solids in an unnamed tributary of Maple Run.
  - c. 47CSR2 Section 3.2.b. – Conditions not allowable in waters of the State were caused by creating sediment deposits on the bottom of the unnamed tributary of Maple Run.

As a result of the aforementioned violations, NOV No. W17-14-007-TAG was issued.

4. On May 12, 2017, WVDEP issued Order No. 8270, in response to the aforementioned violations.
5. On June 7, 2017, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and WV Legislative Rules were observed and documented:
  - a. 22-11-8(b)(1) -Slanes Property discharged pollutants from a land disturbance into waters of the State, an unnamed tributary of Maple Run, without authorization pursuant to a WV/NPDES permit.
  - b. 22-11-1 et seq. – Slanes Property failed to comply with the terms and conditions of Order No. 8270. Specifically:
    - i. Slanes Property failed to submit an administratively complete WV/NPDES permit application, as required by Order for Compliance Item No. Two (2).
    - ii. Slanes Property failed to submit an approvable plan of corrective action, as required by Order for Compliance Item No. Three (3). Slanes Property's approvable plan of corrective action was not submitted until August 23, 2017.
    - iii. Slanes Property failed to install and maintain storm water and sediment/erosion control devices to prevent the release of sediment-laden waters into waters of the State and temporarily mulch all disturbed areas, as required by Order for Compliance Item No. Four (4).
  - c. 47CSR2 Section 3.2.b – Slanes Property caused conditions not allowable in waters of the State by creating sediment deposits on the bottom of the unnamed tributary of Maple Run.

As a result of the aforementioned violations, NOV No. W17-14-013-TAG was issued.

6. On June 29, 2017, WVDEP personnel conducted a record review for this facility and determined the following. On February 20, 2017, Slanes Property submitted an application for WV/NPDES permit coverage. On May 16, 2017, subsequent to several

correspondences with Slanes Property regarding clarification of the responsible party's name, WVDEP personnel requested that Slanes Property submit a security letter, then resubmit the amended WV/NPDES permit application. On June 28, 2017, WVDEP personnel again requested that Slanes Property submit the required security letter and resubmit the WV/NPDES permit application. Because the requested security letter was not provided and the WV/NPDES permit application was not resubmitted, the WV/NPDES permit application was not administratively complete, and a valid WV/NPDES permit was not issued.

7. On September 13, 2017, Slanes Property was issued WV/NPDES Permit No. WV0115924, Registration No. WVR108580, for regulated land disturbance activity at the aforementioned site.
8. On November 14, 2017, WVDEP personnel met with representatives of Slanes Property 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. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

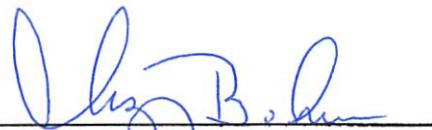
1. Slanes Property shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of Slanes Property's West Virginia Code and Legislative Rule violations, Slanes Property shall be assessed a civil administrative penalty of eleven thousand one hundred eighty-five dollars (\$11,185) 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 57<sup>th</sup> Street SE**  
**Charleston, WV 25304**

### **OTHER PROVISIONS**

1. Slanes Property 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, Slanes Property 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, Slanes Property 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 Slanes Property 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, Slanes Property 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 Slanes Property becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Slanes Property 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 Slanes Property 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 Slanes Property (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 Slanes Property 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 Slanes Property 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 Slanes Property, its successors and assigns.

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



Edward O. Perman, III  
Slanes Property LLC  
Gregory Bohner

9 May 2018

Date

Public Notice begin:

Date

Public Notice end:

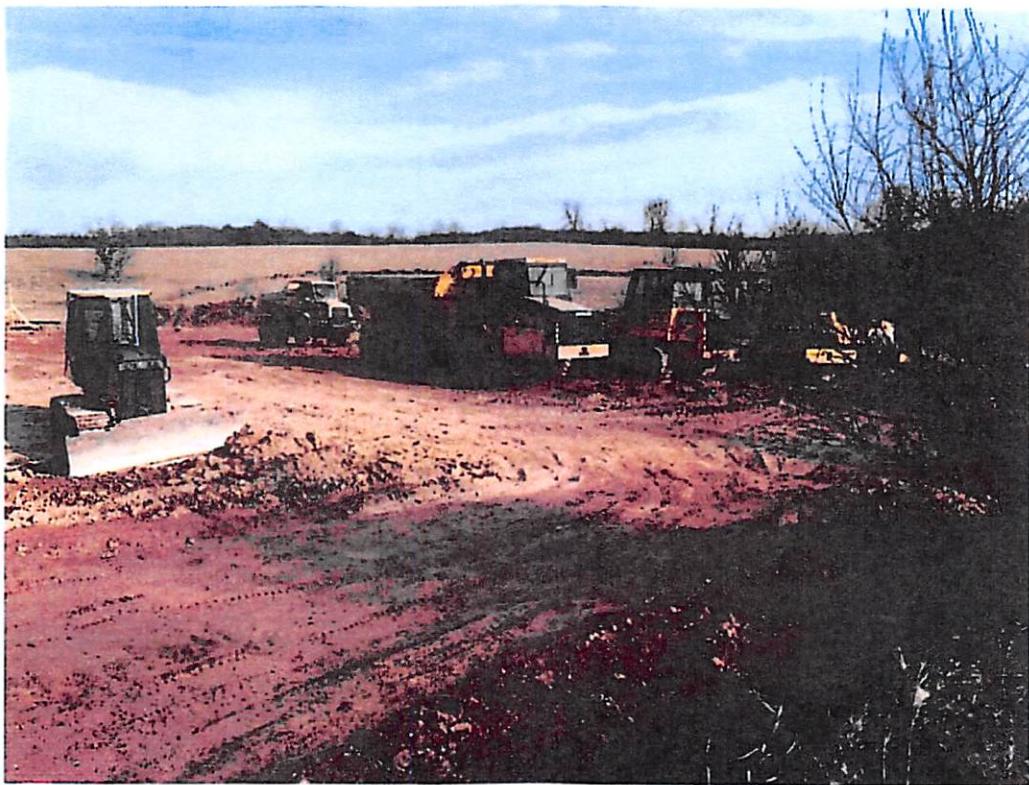
Date

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

Date



Slanes Property LLC



Unpermitted land disturbance of more than one acre. 2/7/17



Southern area with sediment laden water from project converging with UT of Maple Run. 04/26/17

Slanes Property LLC

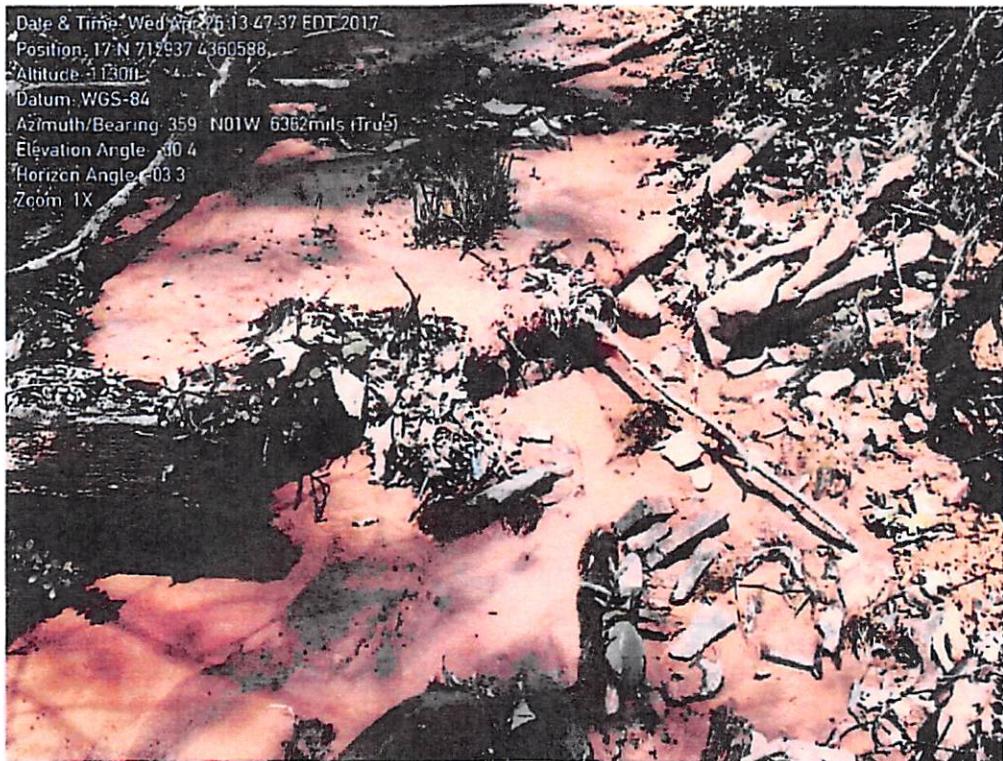


Southern area with sediment laden water from project converging with UT of Maple Run. 04/26/17



Portion of project contributing sediment laden water to the UT of Maple Run. 04/26/17

Slanes Property LLC



Sediment deposits from project in Ut of Maple Run. 04/26/17



Inlet of culvert with clear water upstream of project road. Note: sediment laden water pooling near culvert inlet. 04/26/17

## Slanes Property LLC



Southern area of the project contributing sediment laden deposits in UT of Maple Run. 06/07/17



Southern area with sediment laden deposits from project converging with UT of Maple Run. 06/07/17

Slanes Property LLC



Inlet of culvert upstream of the project road. Note: sediment laden water pooling near culvert inlet.  
06/07/17



Culvert outlet from project road with sediment laden deposits in UT of Maple Run. 06/07/17

## Slanes Property LLC



Southwest view of project road with water bars installed. Note: Road has not been stabilized and the outlet of the water bar is unprotected and approximately 10 feet from the UT of Maple Run. 06/07/17



Overview of unpermitted project building. 06/07/17

## Slanes Property LLC



Northeast view of the project from the pavement of the parking lot. 06/07/17

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Slanes Property LLC Receiving Stream: \_\_\_\_\_

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	3b, 3c	5bii	5biii	5c					
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					
Average Potential for Harm Factor			1	1	0.4	1	1	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range										
	Degree of Non-Compliance	1 to 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 <=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 <= 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.

		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
3b, 3c	Minor	Major	\$2,000	1	\$2,000
5bii	Minor	Major	\$1,700	1	\$1,700
5biii	Minor	Major	\$2,000	1	\$2,000
5c	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
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					\$9,700

## **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 employs or is part of a corporation that employs 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		\$970
6.2.b.4 - Compliance/noncompliance history	25		\$2,425
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	(\$970)
6.2.b.3 - Cooperation with the Secretary		10	(\$970)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$1,485</b>
<b>Penalty =</b>			<b>\$11,185</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> Economic benefit not warranted.	