



west virginia department of environmental protection

Division of Mining and Reclamation
601 57th Street
Charleston, WV 25304
Phone: 304-926-0440/Fax: 304-926-0456

Harold Ward, Cabinet Secretary
dep.wv.gov

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

TO: Spring Creek Energy Company, LLC
327 Southpointe Drive
Charleston, WV 25314

DATE: July 22, 2026

ORDER NO.: M-25-499

INTRODUCTION

This Consent Order is issued by the Director of the Division of Mining and Reclamation (hereinafter “Director”), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to Spring Creek Energy Company, LLC (hereinafter “Spring Creek”).

FINDINGS OF FACT

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

1. Spring Creek holds West Virginia National Pollution Discharge Permits (“NPDES”) issued by the West Virginia Department of Environmental Protection (“WVDEP”) for its mining and mining-related operations in West Virginia. Among those WVDEP NPDES Permits is WV1024698 (“Permits”).
2. The WVDEP NPDES Permits are issued pursuant to the WVDEP’s authority under the West Virginia Water Pollution Control Act pursuant to authority delegated to the WVDEP by the United States Environmental Protection Agency under the Federal Clean Water Act for the issuance of WVDEP NPDES Permits.
3. Spring Creek has failed to submit required monthly Discharge Monitoring Reports (“DMRs”) information on its effluent discharge and other information to the WVDEP, pursuant to the terms and conditions of the WVDEP NPDES Permits. This Failure to Submit has occurred through not electronically filing the DMRs as prescribed by the Division of Mining and Reclamation (“the Division”), or through the submission of paper copies of DMRs.

Promoting a healthy environment.

4. The Division has developed and maintains a database which compiles the information submitted in DMRs by holders of WVDEP NPDES Permits issued for mining and mining-related operations, including the information submitted by Spring Creek for the Permits (“the Database”). The Database has been used by the WVDEP to track compliance with WVDEP NPDES Permits for coal mining activities.
5. The WVDEP has evaluated agency records beginning with April 2022 through March 2026 regarding Spring Creek’s Permits, DMRs, and other related information, including information submitted by Spring Creek at the request of WVDEP, and has completed an evaluation of Spring Creek’s DMR compliance.
6. Based on its evaluation, the WVDEP has documented the failure to report Monthly DMRs information required by the WVDEP NPDES Permits. The results of this investigation are included in Attachment 2 which lists the WVDEP NPDES Permits that have violations.

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. Because of Spring Creek’s WVDEP NPDES violations of the Permit, Spring Creek shall be assessed a Civil Administrative Penalty of **\$500 (five hundred)** to be paid to the Department of Environmental Protection within thirty (30) days of demand for penalty from WVDEP. The penalty amount will be deposited in the Stream Restoration Fund. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or Federal Law.
2. **Total Payment in the amount of \$500 (five hundred) shall be mailed to:**

**Jamie Hopen – NPDES Enforcement Program Manager
Division of Mining and Reclamation
WV-DEP
601 57th Street SE
Charleston, WV 25304**

3. The Order for Compliance of this Order satisfies any claim WVDEP has or may have for penalties under the West Virginia Water Pollution Control Act for violations of the effluent limits for outlets which occurred April 2022 through March 2026 in relation to the specified Permits.

OTHER PROVISIONS

1. Spring Creek 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, Spring Creek 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, Spring Creek 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 Spring Creek 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, Spring Creek 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 Spring Creek becomes aware of such a delay, notification shall be provided to the Assistant Deputy Director 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 Spring Creek 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 Spring Creek (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 Spring Creek 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 Spring Creek to additional penalties and injunctive relief in accordance with the applicable law.
5. This Order shall terminate upon the verification of WVDEP that Spring Creek has met all requirements with the Order and is in full compliance.
6. 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.
7. This Order is binding on Spring Creek, its successors and assigns.
8. The effective date of this Order shall be the date the Order is executed by the Director.

F.H. McCullough III Managing Partner August 31 2026
Company Representative, Representative Title Date
Spring Creek Energy Company, LLC

F.H. McCullough III
Company Representative, Printed

Public Notice begin date: _____

Public Notice end date: _____

Jonathan Rorrer, Director
Department of Environmental Protection
Division of Mining and Reclamation

Date

Attachment 1

The Permittee shall achieve compliance with the requirements of the Order in accordance with the following Compliance Schedule:

a. Submit Payment of Civil Administrative Base Penalty	Pursuant to Sections 1 and 2 of the 'Order for Compliance' of this Order
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Failures to Submit - Spring Creek Energy Company, LLC

Permit	Reporting Frequency
WV1024698	1Q25
WV1024698	2Q25
WV1024698	3Q25
WV1024698	4Q25
WV1024698	1Q26

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:	Spring Creek Energy Company, LLC	WVNPDES No.:	WV1024698
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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#											
			No T	No T	No T	T	T	T	T AI	T AI	T AI	T I	T I	T I
a)	Amount of Pollutant Released	1 to 3	1	1	2	1	1	2	1	1	2	1	1	2
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	3	3	3	1	1	1
c)	Sensitivity of the Environment	0 to 3	1	1	1	3	3	3	3	3	3	2	2	2
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1
	Average Potential for Harm Factor		1	1	1.2	1.4	1.4	1.6	1.8	1.8	2	1.2	1.2	1.4
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	1	2	3	1	2	3	1	2	3	1	2	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.

[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
No T	Minor	Minor	\$1,000		\$0
No T	Minor	Moderate	\$1,500		\$0
No T	Moderate	Major	\$4,200		\$0
T	Moderate	Minor	\$2,400		\$0
T	Moderate	Moderate	\$3,400		\$0
T	Moderate	Major	\$4,600		\$0
T AI	Moderate	Minor	\$2,800		\$0
T AI	Moderate	Moderate	\$3,800		\$0
T AI	Moderate	Major	\$5,000		\$0
T I	Moderate	Minor	\$2,200		\$0
T I	Moderate	Moderate	\$3,200		\$0
T I	Moderate	Major	\$4,400		\$0
0	FALSE	FALSE	FALSE		\$0
TIAL	Moderate	Minor	\$2,600		\$0
TIAL	Moderate	Moderate	\$3,600		\$0
TIAL	Moderate	Major	\$4,800		\$0
0	FALSE	FALSE	FALSE	1	\$0
FTS	Major	Major	\$10,000	5	\$50,000
FTS	Moderate	Moderate	\$3,333		\$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					\$50,000

Penalty Adjustment Factors

(pursuant to 47CSR1-7.2)

Penalty Adjustment Factor

7.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

7.2.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

7.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

7.2.b.7 - Public Interest (increase to be determined)

7.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

7.2.b.9 - Staff investigative costs (increase to be determined)

7.2.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)

7.2.b.2 - Good Faith - 10% decrease to 10% increase

7.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

7.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

Page 5 of 5

(pursuant to 47CSR1-7.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
7.2.b.1 - Willfulness and/or negligence -	30		\$15,000
7.2.b.4 - Compliance/noncompliance history -	10		\$5,000
7.2.b.6 - Economic benefits - (flat monetary increase)	\$5,000		\$5,000
7.2.b.7 - Public Interest - (flat monetary increase)			\$0
7.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
7.2.b.9 - Investigative costs - (flat monetary increase)			\$0
7.2.b.10 - Other factors (size of violator)			\$0
7.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
7.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)		Per Assessment Officer	(\$74,560)
Public Notice Costs (flat monetary increase)	\$60		\$60
7.2.b.2 - Good Faith - Increase			\$0
7.2.b.2 - Good Faith - Decrease			\$0
7.2.b.3 - Cooperation with the Secretary			\$0
7.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$49,500)
Penalty =			\$500

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$5,000
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	\$5,000
Comments:	Monitoring & Reporting: Failure to Submit DMR x 5 Quarters @ \$1,000 each = \$5,000