



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
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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**

TO: City of Salem
Honorable Robert Samples, Mayor
PO Box 352
Salem, WV 26426

DATE: March 25, 2015

ORDER NO.: 8235

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 City of Salem (hereinafter "Salem").

FINDINGS OF FACT

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

1. Salem operates a wastewater treatment plant located in Salem, Harrison County, West Virginia. Salem was reissued WV/NPDES Water Pollution Control Permit No. WV0020257 on June 30, 2005, April 30, 2009, and April 30, 2014.
2. On August 28, 2006, a Consent Decree was issued to Salem by the Circuit Court of Harrison County in response to Civil Action No. 04-C-210-3, brought by West Virginia Department of Environmental Protection (WVDEP). The Consent Decree (attached) required that Salem complete certain remedial tasks in accordance with a provided schedule (Section III). In addition, the Consent Decree required submittal of quarterly compliance reports to WVDEP until all remedial measures had been completed (Section VI).

3. On August 22, 2007, 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. 47CSR2 Section 3.2.b - Salem caused conditions not allowable in waters of the State by creating sludge banks in Salem Fork of Ten Mile Creek.
 - b. Chapter 22-11-1 et seq. - Salem failed to comply with all of the provisions of the aforementioned Consent Decree.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W-AWL-81407-001 and W-AWL-81407-002 were issued to Salem.

4. On June 10, 2010, WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel observed and documented that Salem failed to provide a written progress report on a quarterly basis detailing actions performed in relation to the Inflow & Infiltration (I&I) elimination program. During the inspection, the following violation of WV State Code was observed and documented:
 - a. Chapter 22-11-1 et seq. - Salem failed to comply with Section VI of the aforementioned Consent Decree. Specifically, Salem failed to submit quarterly compliance reports for any quarter of 2009 and the first quarter of 2010.

As a result of the aforementioned violations, NOV Nos. W-NW-JME-061010-001 and W-NW-JME-061010-002 were issued to Salem.

5. On March 18, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and Salem's WV/NPDES permit were observed and documented:
 - a. Appendix A.IV.2 - The permittee failed to immediately report a large spill from the cyclone grit remover bagger system.
 - b. Section E.4 - The permittee failed to provide documentation of current noncompliance of industrial users to WVDEP after thirty-two (32) permit exceedances were reported from industrial users.
 - c. Section E.2.c.6 - The following industrial user Discharge Monitoring Reports (DMRs) were not submitted within twenty (20) days following the end of the reporting period:
 - i. IU03 - June, July, August, October, November, and December 2013; January and February 2014.
 - ii. IU08 - February 2014.
 - iii. IU09 - May, August, October, and November 2013; February 2014.
 - d. Appendix A.II.1 - The permittee failed to properly operate and maintain the facility. Specifically, the permittee's ultrasonic flow meter was out of service, and the bar-screens for Sanitary Sewer Overflow (SSO) Nos. 001 and 002 were not maintained.

- e. Section A.001 - A review of DMRs from February 2013 through February 2014 revealed seventeen (17) exceedances of Salem's permit parameters. These exceedances can be further defined as:
 - i. Minor violations- seven (7)
 - ii. Moderate violations- five (5)
 - iii. Major violations- five (5)
- f. Section C.22- The permittee failed to submit quarterly I&I reports since 2008.
- g. Chapter 22-11-1 et seq. - The permittee failed to comply with all of the provisions of the aforementioned Consent Decree.
 - i. Section III of the Consent Decree- With the exception of preparing and submitting a preliminary engineering report for a project to comply with Combined Sewer Overflow (CSO) policy, none of the eighteen (18) remedial tasks were completed in accordance with the provided schedule. Salem represented that the requirement to dye test drop inlets was partially completed, although not within the timeframe specified by the Consent Decree. A quarterly report submitted for the 4th Quarter of 2008 stated that Salem had been divided into six (6) quadrants for the purpose of completing and documenting dye testing. The report stated that dye testing had been completed for Quadrant Five (5), and Salem was in the process of dye testing Quadrant One (1). During this inspection, Ronnie Davis, Public Works Supervisor for Salem, represented that Salem also had documentation of dye testing for Quadrants One (1) and Four (4).
 - ii. Section VI of the Consent Decree- Salem failed to submit any quarterly compliance reports.
- h. Section C.13 - Salem discharged from a point other than a permitted treatment outfall. SSO records reviewed from March 2013 through February 2014 revealed five (5) discharges from SSO No. 001 and thirteen (13) discharges from SSO No. 002.

As a result of the aforementioned violations, NOV No. CM-TJA-031914-001 was issued to Salem.

6. On September 4, 2014, WVDEP personnel conducted a review of DMRs from August 2012 through July 2014. During the review, the following exceedances were observed and documented (Table One):
 - a. Section A.001 – Thirty-three (33) exceedances of Salem's WV/NPDES permit parameters were observed and documented. These exceedances can be further defined as:
 - i. Minor violations- sixteen (16)
 - ii. Moderate violations- nine (9)
 - iii. Major violations- eight (8)
7. On September 12, 2014, WVDEP personnel conducted a record review of SSO records from August 2012 through July 2014. During the review, the following violations of West Virginia Legislative Rule were observed and documented:

- a. Section C.13 - Salem discharged from a point other than a permitted treatment outfall. Specifically, a total of thirty-six (36) discharges had occurred from SSO Nos. 001 and 002.
8. On March 19, 2015, WVDEP personnel and representatives of Salem met to discuss the terms and conditions of this Order.
 9. On March 23, 2015, WVDEP personnel conducted a review of DMRs from August 2014 through February 2015. During the review, the following violations of Salem's WV/NPDES permit were observed and documented:
 - a. Section A.001 – Eight (8) exceedances of Salem's WV/NPDES permit parameters were observed and documented (Table One). These exceedances are defined as:
 - i. Minor violations- four (4)
 - ii. Moderate violations- four (4)
 - b. Section E.4 - The permittee failed to provide documentation of current noncompliance of industrial users to WVDEP after twenty (20) permit exceedances were reported from industrial users.
 - c. Section E.2.c.6 - The following industrial user DMRs were not submitted within twenty (20) days following the end of the reporting period:
 - i. IU03 – December 2014 and February 2015.
 - ii. IU08 – December 2014 and February 2015.
 - iii. IU09 – February 2015.
 - d. Section C.6 – February 2015 DMRs for Outlet No. 001 were not submitted within twenty (20) days following the end of the reporting period.

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. Salem shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit, pertinent laws and rules, and provisions of the aforementioned Consent Decree.
2. Within thirty (30) days of the effective date of this Order, Salem shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Salem 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. WV0020257 and Order No. 8235. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road
Fairmont, WV 26554**

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.

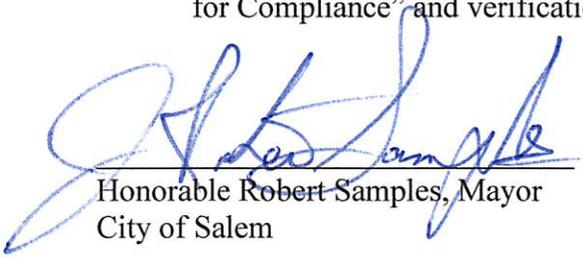
3. Because of Salem's West Virginia Code, Legislative Rule and permit violations, Salem shall be assessed a civil administrative penalty of eighty-two thousand three hundred ten dollars (\$82,310) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality 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. Salem 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, Salem 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, Salem 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 Salem 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, Salem 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 Salem becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Salem 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 Salem 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 Salem (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 Salem 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 Salem 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 Salem, its successors and assigns.

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


Honorable Robert Samples, Mayor
City of Salem

4-14-15

Date

Public Notice begin:

Date

Public Notice end:

Date

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

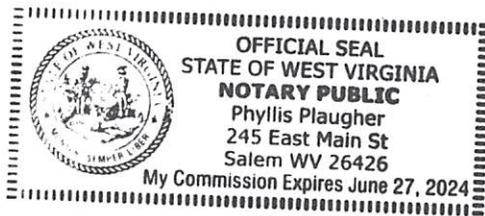
Date

revised March 2013

RECEIVED

APR 17 2015

ENVIRONMENTAL
ENFORCEMENT



Phyllis Plaughter
my Commission Expires
June 27, 2024

Table One:
City of Salem DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 8/2012 through 2/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
3/2014	BOD5	Lbs/Day	57.75	75.2	30%	X	-	-
5/2014	BOD5	Lbs/Day	28.88	52.7	82%	-	X	-
1/2015	BOD5	mg/L	13	14.1	8%	X	-	-
2/2013	TSS	Lbs/Day	100.14	100.2	0.1%	X	-	-
3/2014	TSS	Lbs/Day	100.14	110	10%	X	-	-
5/2014	TSS	Lbs/day	100.14	146	46%	-	X	-
9/2012	Ammonia Nitrogen	Lbs/Day	3.34	4.15	24%	X	-	-
9/2012	Ammonia Nitrogen	mg/L	1	2.34	134%	-	X	-
7/2013	Ammonia Nitrogen	Lbs/Day	3.34	3.67	10%	X	-	-
7/2013	Ammonia Nitrogen	Lbs/Day	1	1.67	67%	-	X	-
10/2012	Zinc	mg/L	0.036	0.046	28%	X	-	-
2/2013	Zinc	mg/L	0.036	0.038	6%	X	-	-
1/2014	Zinc	mg/L	0.036	0.043	19%	X	-	-
4/2014	Zinc	mg/L	0.036	0.042	17%	X	-	-
9/2012	Copper	mg/L	0.01	0.014	40%	X	-	-
4/2013	Copper	mg/L	0.01	0.012	20%	X	-	-
10/2014	Copper	mg/L	0.0057	0.018	216%	-	X	-
1/2015	Copper	mg/L	0.0057	0.008	40%	-	X	-
1/2013	Fecal Coliform	Cts/100mL	200	4200	2000%	-	-	X
2/2013	Fecal Coliform	Cts/100mL	200	1120	460%	-	-	X
3/2013	Fecal Coliform	Cts/100mL	200	2700	1250%	-	-	X
7/2013	Fecal Coliform	Cts/100mL	200	848	324%	-	-	X
8/2013	Fecal Coliform	Cts/100mL	200	1200	500%	-	-	X
2/2014	Fecal Coliform	Cts/100mL	200	228	14%	X	-	-
1/2015	Fecal Coliform	Cts/100mL	200	775	288%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY - 8/2012 through 2/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
9/2012	Fecal Coliform	Cts/100mL	400	1200	200%	-	X	-
1/2013	Fecal Coliform	Cts/100mL	400	4200	950%	-	-	X
2/2013	Fecal Coliform	Cts/100mL	400	1120	180%	-	X	-
3/2013	Fecal Coliform	Cts/100mL	400	2700	575%	-	X	-
5/2013	Fecal Coliform	Cts/100mL	400	6000	1400%	-	-	X
7/2013	Fecal Coliform	Cts/100mL	400	1200	200%	-	X	-
7/2013	Fecal Coliform	Cts/100mL	400	600	50%	X	-	-
8/2013	Fecal Coliform	Cts/100mL	400	1200	200%	-	X	-
2/2014	Fecal Coliform	Cts/100mL	400	5200	1200%	-	-	X
1/2015	Fecal Coliform	Cts/100mL	400	1200	200%	-	X	-
10/2014	Copper, Total Recoverabl	mg/L	0.014	0.018	29%	X	-	-

Outlet 001 Exceedances - Minimum 85% Removal - AVG. MONTHLY - 8/2012 through 2/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
1/2013	BOD-5	%	85.0	67.0	21.2%	X	-	-
3/2013	BOD-5	%	85.0	80	11%	X	-	-
1/2015	BOD-5	%	85.0	83	15%	X	-	-
1/2013	TSS	%	85.0	75	4%	X	-	-
1/2015	TSS	%	85.0	83	15%	X	-	-

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		20	13	8



August 14, 2007-Sludge bank at SSO 002.



August 14, 2007-Sludge bank on Salem Fork of Ten Mile Creek downstream from SSO Outlet 002.



March 18, 2014 Grit was observed outside the bagger system.



March 18, 2014 Grit was observed outside the bagger system.

City of Salem
WV0020257



March 18, 2014-Grit was also observed on the sidewalk and in the grass.

B. Swiger

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

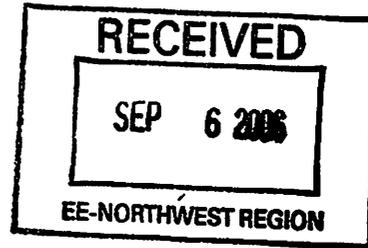
**ALLYN G. TURNER, DIRECTOR,
DIVISION OF WATER AND WASTE,
MANAGEMENT, WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Plaintiff,

v.

CITY OF SALEM,

Defendant.



**Civil Action No. 04-C-210-3
(Judge Matish)**

CONSENT DECREE

WHEREAS, Plaintiff Allyn G. Turner, Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection ("WVDEP") filed the Complaint herein alleging that the Defendant had violated the West Virginia Water Pollution Control Act ("Act"), West Virginia Code §§ 22-11-1 through -28, and West Virginia/National Pollutant Discharge Elimination System ("WV/NPDES") Permit No. WV0020257 ("Permit") at its waste water treatment facility in Harrison County, West Virginia; and

WHEREAS, Defendant has denied any liability for the violations in the Complaint; and

WHEREAS, Defendant owns and operates a waste water treatment facility that discharges into Salem Fork of Ten Mile Creek of the West Fork of the Monongahela River, and which facility the WVDEP alleges is in violation of the Act and WV/NPDES Permit No. WV0020257; and

WHEREAS, the parties having agreed that settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter; and

NOW, THEREFORE, It is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter and the parties hereto pursuant to W. Va. Code § 22-11-22. Venue is proper in this Circuit Court pursuant to W. Va. Code § 22-11-22, because Defendant is located and doing business in this judicial Circuit, and because the violations that are the subject of this action occurred in this judicial Circuit.

II. APPLICATION OF CONSENT DECREE

This Consent Decree applies to, and is binding upon, the Defendant in this action, its officers, directors, agents, servants, employees, contractors, subcontractors, successors, assigns, and all persons, firms, and corporations in active concert or participation with them.

III. INJUNCTIVE RELIEF

The Court enjoins the Defendant from operating or maintaining its waste water treatment facility in a manner that will result in further violations of the Act and its

Permit, and orders the Defendant to comply with all terms and conditions in its WV/NPDES permit.

The Court further orders the Defendant to expend the funds necessary to operate and maintain its treatment facility in compliance with the Act and its Permit. In this regard, the Defendant shall undertake a program to attain and thereafter maintain compliance with the Act and its Permit. This program shall include undertaking and completing the following tasks on or before the deadlines specified in the following compliance schedule:

<u>TASK</u>	<u>DEADLINE DATE</u>
Dye test drop inlets	August 31, 2005
Prepare and start implementation of Nine Minimum Controls (NMCs)	April 30, 2006
Review existing records, reports and as built drawings	March 30, 2006
Conduct smoke testing and inspection of manholes	May 30, 2006
Conduct sampling program	May 30, 2006
Identify illegal connections	May 30, 2006
Complete visual and video inspection of sewer lines	August 30, 2006
Prepare and submit approvable Water Quality Study	December 31, 2006

Prepare and submit approvable Long Term Control Plan	March 30, 2007
Prepare and submit Preliminary Engineering Report for a project to eliminate dry weather overflows	March 30, 2007
Prepare and submit Plans and Specifications for construction of a project to eliminate dry weather overflows	September 30, 2007
Submit document indicating NMCs have been fully implemented	April 30, 2007
Start construction of a project to eliminate dry weather overflows	April 30, 2008
Complete construction of a project to eliminate dry weather overflows	April 30, 2009
Prepare and submit Preliminary Engineering Report for a project to comply with CSO Policy	September 30, 2008
Prepare and submit Plans and Specifications for construction of a project to comply with CSO Policy	March 31, 2010
Start construction of a project to comply with CSO Policy	March 31, 2011
Complete construction of a project to comply with CSO Policy	November 30, 2012

IV. CIVIL PENALTY

In settlement of the Plaintiff's claims in the Complaint relating to reported violations of the Act and WV/NPDES Permit No. WV0020257, the Defendant shall pay a civil penalty of \$25,000 payable in twenty-five (25) equal installments of \$1,000, due and

payable beginning thirty (30) days after this Consent Decree is entered by the Court and monthly thereafter from the date of entry of the Consent Decree. The Defendant shall tender each payment to the Chief Inspector, Environmental Enforcement, West Virginia Department of Environmental Protection, 601 57th Street SE, Charleston, West Virginia 25304, by check payable to the "West Virginia Department of Environmental Protection" for deposit in the Water Quality Management Fund.

V. STIPULATED PENALTIES

The Defendant shall be liable for stipulated penalties to the WVDEP for failure to comply with any of the requirements of this Consent Decree. Stipulated penalties shall accrue per violation per day as follows:

<u>Period of Noncompliance</u>	<u>Penalty</u>
1 st through 15 th day	\$250 per day per violation
16 th through 30 th day	\$500 per day per violation
After 30 th day	\$1,000 per day per violation

The Defendant shall pay the stipulated penalty assessed for any violation of this Consent Decree within 15 days of receipt of written demand by Plaintiff, unless the Defendant moves the Court within that 15-day period for a hearing thereon and thereafter demonstrates to the satisfaction of the Court that the failure to meet any deadline or requirement in this Consent Decree was due to circumstances entirely beyond the control of the Defendant.

The stipulated penalties provided herein pertain only to the requirements of this Consent Decree and are in addition to other remedies and sanctions available to the WVDEP by reason of the Defendant's failure to comply with the requirements of the Consent Decree, the Act, or its Permit. All payments to the WVDEP under this Section shall be paid by certified or cashier's check payable to the "West Virginia Department of Environmental Protection" for deposit in the Water Quality Management Fund and shall be sent to the Chief Inspector, Environmental Enforcement, to the address specified in Section IV above.

VI. QUARTERLY REPORTS

From the date of entry this Consent Decree, the Defendant shall submit quarterly compliance reports to the WVDEP until all remedial measures listed in Section III above are completed. The compliance reports shall indicate what has been accomplished since the submittal of the last compliance report, whether Defendant is on the schedule required by this Consent Decree and, if not on schedule, an explanation of why it is behind schedule, how far it is behind schedule, and what measures are being taken to get back on schedule. Reports shall be sent to the Chief Inspector, Environmental Enforcement, to the address specified in Section IV above, and to the West Virginia Department of Environmental Protection, Environmental Enforcement, 2031 Pleasant Valley Road, Suite No. 1, Fairmont, West Virginia 26554.

VII. FUNDING

Performance of the terms of this Consent Decree by the Defendant is not conditioned on the receipt of any grant or loan funds. In addition, performance is not excused by the lack of any grant or loan funds, or by the processing of any application for the same.

Notwithstanding the foregoing, pursuant to Section X below, in the event the Defendant cannot complete performance of the terms of this Consent Decree, or any task set forth herein, due to a denial of a good-faith funding request from or on behalf of the Defendant, and the Defendant demonstrates to the satisfaction of the WVDEP that such denial is not due to lack of diligence on the part of the Defendant, the Plaintiff will agree to extend the deadlines in this Consent Decree that cannot be met due to such denial.

VIII. FORCE MAJEURE

If any event occurs which causes or may cause a violation of any provision of this Consent Decree by the Defendant, it shall notify the plaintiff in writing within ten (10) days of the date on which the Defendant has knowledge or should have had knowledge that the event may or will cause a violation. The notice shall describe the anticipated duration of the violation, the precise cause or causes of the violation, the measures taken and to be taken by the Defendant to minimize the violation, and the timetable by which those measures will be implemented. The Defendant will adopt all measures to avoid or

minimize any such violation. The Defendant shall make all efforts to identify events that cause or may cause a violation of this Consent Decree.

If the WVDEP agrees that any violation of this Consent Decree is caused solely by circumstances beyond the control of the Defendant, the Defendant shall be excused as to that violation for the period of time the violation continues due to such circumstances. The Defendant's time for performance shall be extended for a period not exceeding the delay actually resulting from such circumstances. In the event the WVDEP does not agree, the Defendant may submit the matter to this Court for resolution. The burden of proving that any delay was caused solely by circumstances beyond the control of the Defendant and the length of such delay shall rest with the Defendant. Failure by the Defendant to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved, and shall constitute a waiver of the Defendant's right under this provision to obtain an extension of its obligations based on that incident.

Compliance with any requirement of this Consent Decree, by itself, shall not constitute compliance with any other requirement. The Defendant must make an individual showing or proof regarding each delayed incremental step or other requirement for which an extension is sought.

Unanticipated or increased costs, by themselves, shall not serve as a basis for relief under this Section. Compliance with the provisions of this Consent Decree is not dependent on the receipt of State or Federal grants or payments.

IX. RETENTION OF JURISDICTION

The Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Decree.

X. MODIFICATIONS

This Consent Decree contains the entire agreement between the Parties. It may not be enlarged, modified, or altered, unless such modifications are made in writing and approved by the Parties and the Court.

XI. PERMITS AND OTHER LAWS AND REGULATIONS

This Consent Decree is not, and shall not be interpreted to be, a permit or modification of a permit under the Act, nor shall it relieve Defendant of any other obligation imposed by the Act, its WV/NPDES permit, or any permit issued under the Act, except as expressly provided herein, nor shall it in any way relieve Defendant of its obligation to comply with any other federal or state law or any rule or regulation in any way related to the substance of this Consent Decree. Any new permit or modification must be obtained in accordance with applicable federal and state laws and rules and regulations.

XII. PUBLIC NOTICE

The parties acknowledge and agree that final approval of this Consent Decree is subject to public notice and comment as provided in 47 C.S.R. §10-16.2.c. The public shall have at least thirty (30) days in which to make any comments on this Consent Decree and the WVDEP reserves the right to withhold or withdraw its consent if the comments indicate that this Consent Decree is inappropriate, improper, or inadequate. The Defendant consents to entry of this Consent Decree without further notice. If for any reason, this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of the WVDEP and the terms of the agreement may not be used as evidence in any litigation between the parties.

XIII. EFFECTIVE DATE

The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XIV. TERMINATION

Termination of this Consent Decree shall be by order of the Court upon application by any party, provided all of the following conditions have been met: (1) The Defendant has achieved complete compliance with all requirements of this Consent Decree; (2) The Defendant has paid all civil and stipulated penalties required herein; and (3) All motions and other proceedings concerning this Consent Decree have been completed and are no

longer subject to further judicial review and all relief resulting from such motions or other proceedings have been fully satisfied.

XV. PARTIES BOUND BY CONSENT DECREE

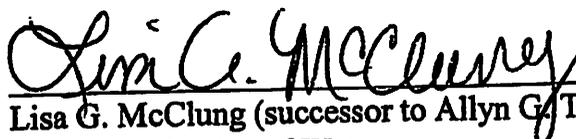
This Consent Decree is binding on the Defendant's successors and assigns, and shall remain in effect until the Defendant or its successors or assigns demonstrate, as required by Section XIV herein, they have complied with all of the terms of this Consent Decree.

XVI. SIGNATORIES AUTHORIZED

Each of the signatories to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to bind legally the party to the Consent Decree so represented by him or her.

It is so ORDERED this five day of August, 2006. *for the Clerk of this Court remove this case from the Active docket of this Court and to send certified copies to each of the parties' attorneys listed below.*
Enter 08/28/06 
JUDGE

We hereby consent to the entry of this Decree.


Lisa G. McClung (successor to Allyn G. Turner),
Director, Division of Water
and Waste Management West Virginia
Department of Environmental Protection

7/18/06
Date

Joseph A. Lazell
Joseph A. Lazell (WVSB No. 2165)
Office of Legal Services/WVDEP
601 57th Street, SE
Charleston, WV 25304
(304) 926.0499, Ext. 1448
Counsel for Plaintiff

7/18/06
Date

CITY OF SALEM

By Frank F. Roberts

7-12-06
Date

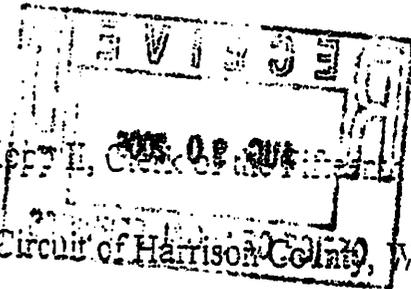
Its City Manager

Richard W. Gallagher

Richard W. Gallagher (WVSB No. 1327)
Robert E. Lannan (WVSB No. 2139)
Robinson & McElwee
P. O. Box 128
Clarksburg, WV 26302-0128
(304) 622.5022
Counsel for Defendant

7-11-06
Date

COUNTY OF HARRISON, TO-WIT:



I, Donald L. Kapp II, Clerk of the Fifteenth Judicial Circuit and the 18th Family Court Circuit of Harrison County, West Virginia, hereby certify the foregoing to be a true copy of the ORDER entered in the above styled action

on the 28 day of August, 2006.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix

Seal of the Court this 28 day of August, 20 06

Donald L. Kapp II
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: City of Salem 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#													
			5a	5b	5c	5d	5f	6ai	6aii	6aiii	7a					
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1				
b)	Toxicity of Pollutant	0 to 3	1	0	0	1	0	1	1	1	1	1				
c)	Sensitivity of the Environment	0 to 3	1	0	0	1	0	1	1	1	1	1				
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	3				
e)	Actual Exposure and Effects thereon	0 to 3	1	0	0	1	0	1	1	1	1	1				
Average Potential for Harm Factor			1	0.4	0.4	1	0.4	1	1	1	1	1.4	No	No	No	No
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	3	3	1	3	3	1	2	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 <= 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.

		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
5a	Minor	Major	\$2,000	1	\$2,000
5b	Minor	Major	\$1,700	1	\$1,700
5c	Minor	Minor	\$400	14	\$5,600
5d	Minor	Major	\$2,000	1	\$2,000
5f	Minor	Major	\$1,700	8	\$13,600
6ai	Minor	Minor	\$1,000	16	\$16,000
6aii	Minor	Moderate	\$1,500	9	\$13,500
6aiii	Minor	Major	\$2,000	8	\$16,000
7a	Moderate	Major	\$4,400	1	\$4,400
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					\$74,800

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		\$7,480
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			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$7,510
Penalty =			\$82,310

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:	