



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**

TO: Berkeley County Public Service Sewer District
Curtis B. Keller, General Manager
65 District Way
P.O. Box 944
Martinsburg, WV 25402

DATE: September 25, 2014

ORDER NO.: 8167

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of the West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to the Berkeley County Public Service Sewer District (hereinafter "BCPSSD").

FINDINGS OF FACT

The District owns and operates and holds WV/NPDES Permits as follows for the following treatment facilities:

1. **Permit Number WV0082759: Opequon/Hedgesville WWTP, Inwood WWTP, Baker Heights WWTP and North End WWTP**
2. **Permit Number WV0103161: Woods II WWTP**
3. **Permit Number WVG551078: Tomahawk Elementary WWTP**
4. **Permit Number WVG551199: Northwind WWTP**
5. **Permit Number WVG550964: Highpointe Subdivision WWTP**
6. **Permit Number WVG550858: Austin (Ghant) MHP WWTP**
7. **Permit Number WVG550132: Falling Waters WWTP**
8. **Permit Number WV0105830: Forest Heights WWTP**

Scott Mandirola, Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection ("WVDEP") filed a Complaint in the Circuit Court of Berkeley County on August 11, 2011 (Civil Action No.: 11-C-656) against Berkeley County Public Service Sewer District ("BCPSSD" or "The District") alleging that the District violated the West Virginia Water Pollution Control Act ("Act"), West Virginia Code §§ 22-11-1 through 22-11-28, and West Virginia/National Pollutant Discharge Elimination System Permit Nos. WV0082759, WV0103161, WV0103110 (WVG551078, WVG551199, WVG550964, WVG550858, WVG550132), WV0105830 ("WV/NPDES Permits") at their respective wastewater treatment facilities in Berkeley County, West Virginia.

Civil Action No.: 11-C-656 was resolved by a Judgment in the amount of \$300,000.00 against BCPSSD by the Berkeley County Circuit Court pursuant to Rule 68 of the West Virginia Rules of Civil Procedure.

As part of the Judgment entered by the Berkeley County Circuit Court pursuant to Rule 68, the District and the WVDEP agreed to negotiate appropriate injunctive relief and a compliance schedule to bring the District's facilities into compliance with the Act and the District's WV/NPDES Permits.

Plaintiff and Defendant have agreed on a system-wide compliance plan that addresses all of the alleged violations in the complaint and will bring the Defendant into compliance with the West Virginia Water Pollution Control Act ("Act"), West Virginia Code §§ 22-11-1 through 22-11-28 and all of the NPDES Permits listed above.

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. The District shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permits and pertinent laws and rules.
2. The District's approved plan of corrective action and schedule (included below) details actions already taken by the District, outlines action items and completion dates for how and when BCPSSD will achieve compliance with all terms and conditions of its WV/NPDES permits and pertinent laws and rules. The plan of corrective action is incorporated into and has become part of this Order. Failure to adhere to the approved plan of corrective action and compliance schedule is a violation of this Order.
3. Because of the District's permit violations, BCPSSD was subject to a civil penalty judgment of three hundred thousand dollars (\$300,000.00) entered by the Circuit Court of Berkeley County in Civil Action No.: 11-C-656. This penalty will be paid to the WVDEP pursuant to the Circuit Court's Order. All payments to the WVDEP under this Section shall

be paid by 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, at the following address:

Chief Inspector, Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

4. The purpose of this Order is to provide for injunctive relief and establish the plan of corrective action pursuant to the compliance schedule detailed below.

CORRECTIVE ACTION PLAN AND COMPLIANCE SCHEDULE

This Order contemplates that Defendant shall take immediate actions necessary to attain compliance with all the requirements of their WV/NPDES Permits and this Order. This Order also acknowledges and contemplates that the District has already completed actions to address many of the violations alleged in the Complaint in Civil Action No.: 11-C-656. Each of the counts listed in the Complaint is described below along with the corrective actions taken by the District prior to the entry of this Order.

A. Actions Completed by BCPSSD Prior to the Entry of This Order

Count I of WVDEP's Complaint alleges discharge limit violations at the Opequon /Hedgesville WWTP, Inwood WWTP, Baker Heights WWTP and North End WWTP and several pre-treatment facilities operated by industrial users. The District operates all of these facilities pursuant to WV/NPDES Permit No.: WV0082759. Count I alleges violations for the following permit effluent discharge limits at each facility:

• **Opequon/Hedgesville**

- *BOD₅* : Monthly Average and Max Daily limits
- *TSS* : Monthly Average and Max Daily limits
- *Total Recoverable Zinc*: Monthly Average limit
- *Total Recoverable Cadmium*: Monthly Average and Max Daily limits (08/2008 only)
- *Total Recoverable Lead*: Monthly Average and Max Daily limits (08/2008 only)
- *Total Recoverable Copper*: Monthly Average and Max Daily limits (2008 only)
- *Chronic Toxicity (Pimephales and Ceriodaphnia)*: Monthly Average and Max Daily limits
- *Fecal Coliform*: Monthly Average and Max Daily limits

• **Corrective Actions taken by BCPSSD at Opequon/Hedgesville**

- 1) In November 2009, the District hired TetraTech as a consultant. Ronald Schuyler with TetraTech performed an extensive evaluation of all of the District's facilities and determined that operational errors and inefficiencies were preventing many of the District's facilities from consistently complying with their WV/NPDES permits. The District retained Mr. Schuyler to conduct a comprehensive training program for all of the District's operators. This training program included on-site training and evaluation for all of the District's operators at every District facility. This training program was completed on or about December 31, 2010. This training enhanced the operation of the facility and helped the District attain compliance for zinc, cadmium, lead, copper and improve performance for chronic toxicity at Opequon/Hedgesville.
- 2) In September 2009, the District hired Pentree, Inc. and Cambridge Water Technology, Inc. to design a pilot "BioMag" treatment system at the District's Opequon/Hedgesville WWTP (OH) facility. The installation of the "BioMag" pilot treatment system at the OH facility began in the summer of 2011. The results

of the pilot system were extremely positive and the planned upgrades to the OH WWTP, Inwood WWTP, Baker Heights WWTP and North End WWTP were designed based on the "BioMag" pilot at the OH facility. The pilot program was concluded on or about **October 31, 2011**.

3) In conjunction with the "BioMag" pilot system, the District began a comprehensive overhaul of the OH facility on **August 10, 2011**. The overhaul at OH included: 1) The installation of new decanters, 2) The complete rebuild and refurbishment of all the aerators at the facility, and 3) The installation of a new Aqua Aerobics control system. The overhaul of the OH facility was concluded on or about **October 31, 2011**. This overhaul substantially improved the treatment capabilities of the facility and brought the facility into consistent compliance for BOD₅ and TSS and improved the facility's treatment for Chronic Toxicity and Fecal Coliform.

4) After receiving permit modification approvals from WVDEP, the District installed a chlorination/de-chlorination system to supplement the UV disinfection at the OH facility. This work started on or about **April 1, 2013** and was completed on **May 1, 2013**. The addition of this supplemental disinfection equipment has improved the OH facility's ability to manage fecal coliform.

• **Inwood WWTP**

- ***BOD₅*** : Monthly Average and Max Daily limits
- ***TSS*** : Monthly Average and Max Daily limits
- ***NH₃-N***: Monthly Average and Max Daily limits
- ***Fecal Coliform***: Monthly Average and Max Daily limits

- **Corrective Actions taken by BCPSSD at Inwood WWTP**

- 1) In November 2009, the District hired TetraTech as a consultant. Ronald Schuyler with TetraTech performed an extensive evaluation of all of the District's facilities and determined that operational errors and inefficiencies were preventing many of the District's facilities from consistently complying with their WV/NPDES permits. The District retained Mr. Schuyler to conduct a comprehensive training program for all of the District's operators. This training program included on-site training and evaluation for all of the District's operators at every District facility. This training program was completed on or about December 31, 2010. This training helped the District attain compliance for BOD₅, TSS, NH₃-N and Fecal Coliform at the Inwood WWTP.
- 2) The District's Inwood WWTP was consistently hampered by defective decanters and associated equipment. The product manufacturer removed and replaced the decanters and control equipment. This replacement work began on or about August 1, 2011 and was completed on September 1, 2011. The new decanters and associated equipment immediately improved the Inwood WWTP's ability to consistently comply with the BOD₅, TSS, NH₃-N and Fecal Coliform parameters in Permit No. WV082759.

- **Baker Heights WWTP**

- *BOD₅* : Monthly Average and Max Daily limits
- *TSS* : Monthly Average and Max Daily limits
- *NH₃-N*: Monthly Average and Max Daily limits
- *Total Recoverable Zinc*: Monthly Average limit

- *Fecal Coliform: Monthly Average and Max Daily limits*

- **Corrective Action taken by BCPSSD at Baker Heights WWTP**

- 1) In November 2009, the District hired TetraTech as a consultant. Ronald Schuyler with TetraTech performed an extensive evaluation of all of the District's facilities and determined that operational errors and inefficiencies were preventing many of the District's facilities from consistently complying with their WV/NPDES permits. The District retained Mr. Schuyler to conduct a comprehensive training program for all of the District's operators. This training program included on-site training and evaluation for all of the District's operators at every District facility. This training program was completed on or about December 31, 2010. This training helped the District attain compliance for BOD₅, TSS, NH₃-N and Fecal Coliform at the Baker Heights WWTP.

- 2) The District's Baker Heights WWTP was consistently hampered by defective decanters and associated equipment. The product manufacturer removed and replaced the decanters and control equipment. This replacement work began on or about August 1, 2011 and was completed on September 1, 2011. The new decanters and associated equipment immediately improved the Baker Heights WWTP's ability to consistently comply with the BOD₅, TSS and NH₃-N parameters in Permit No. WV082759.

- **North End WWTP**

- *NH₃-N: Monthly Average and Max Daily limits (2008 only)*
- *TSS: Max Daily limit*
- *Fecal Coliform: Monthly Average (2008 only) and Max Daily limits*

• **Corrective Actions taken by BCPSSD at the North End WWTP**

1) In November 2009, the District hired TetraTech as a consultant. Ronald Schuyler with TetraTech performed an extensive evaluation of all of the District's facilities and determined that operational errors and inefficiencies were preventing many of the District's facilities from consistently complying with their WV/NPDES permits. The District retained Mr. Schuyler to conduct a comprehensive training program for all of the District's operators. This training program included on-site training and evaluation for all of the District's operators at every District facility. This training program was completed on or about December 31, 2010. This training helped the District attain compliance for BOD₅, TSS, and Fecal Coliform at the North End WWTP.

2) The District's North End WWTP was consistently hampered by defective decanters and associated equipment. The product manufacturer removed and replaced the decanters and control equipment. This replacement work began on or about August 1, 2011 and was completed on September 1, 2011. The new decanters and associated equipment immediately improved the North End WWTP's ability to consistently comply with the BOD₅, TSS, NH₃-N and Fecal Coliform parameters in Permit No. WV082759.

• **Eco Lab Industrial Pre-treatment Facility and Other Industrial Users under Permit no. WV0082759**

- *BOD₅ : Monthly Average and Max Daily limits*
- *TSS : Monthly Average and Max Daily limits*
- *Flow: Max Daily*
- *Total Recoverable Zinc: Max Daily Limit*
- *Total Recoverable Silver: Max Daily Limits*

- *Total Recoverable Cyanide: Max Daily Limits*
- *Total Recoverable Copper: Max Daily Limits*
- *pH*

• **Corrective Actions taken by BCPSSD at the Eco Lab Industrial Pre-treatment Facility and Other Industrial Users**

- 1) In late 2011, BCPSSD began a concerted outreach effort to all of the Industrial users in the system to stress the importance of compliance with their permits. District operators and personnel now regularly monitor the IUs and their facilities. These efforts are ongoing and the District still faces challenges with Industrial Users, especially regarding flow.

Count II of WVDEP's Complaint alleges discharge limit violations at the Woods II WWTP, which the District operates pursuant to WV/NPDES Permit No.: WV0103161. Count II alleges violations for the following permit effluent discharge limits:

• **Woods II WWTP**

- *BOD₅ : Monthly Average and Max Daily limits*
- *TSS : Monthly Average and Max Daily limits*
- *Fecal Coliform: Monthly Average and Max Daily limits*
- *NH₃-N: Monthly Average and Max Daily limits*
- *Total Recoverable Zinc: Average Monthly Limit*
- *Total Recoverable Copper: Average Monthly and Max Daily Limits*
- *D.O.*
- *BOD₅ % Removal*
- *TSS % Removal*

• **Corrective Actions taken by BCPSSD at the Woods II WWTP**

- 1) In November 2009, the District hired TetraTech as a consultant. Ronald Schuyler with TetraTech performed an extensive evaluation of all of the District's facilities

and determined that operational errors and inefficiencies were preventing many of the District's facilities from consistently complying with their WV/NPDES permits. The District retained Mr. Schuyler to conduct a comprehensive training program for all of the District's operators. This training program included on-site training and evaluation for all of the District's operators at every District facility. This training program was completed on or about December 31, 2010. This training helped the District attain compliance for BOD₅, TSS, Fecal Coliform, D.O., metals and % removal at the Woods II WWTP through improved operation and maintenance of the facility.

- 2) After receiving permit modification approval from the WVDEP, the District started the construction and installation of an additional lagoon and associated equipment. This work began on April 1, 2013 and construction was completed on July 31, 2013. The lagoon was completely filled and operational by August 2, 2013.
- 3) The District requested permit relief from the WVDEP to evaluate the source and cause of Copper issues at the Woods II facility. On May 1, 2013, the WVDEP granted the District "Report only" limits for Total Recoverable Copper for a period of two years.

Count III of WVDEP's Complaint alleges discharge limit violations at several facilities operated by the District pursuant to General Permit Number WV0103110. The facilities included in Count III include Tomahawk Elementary WWTP (WVG551078), Northwind WWTP (WVG551199), Highpointe Subdivision WWTP (WVG550964), Austin (Ghant) MHP

WWTP (WVG550858), and Falling Waters WWTP (WVG550132). Alleged violations at these facilities include violations for:

- *BOD₅* : Monthly Average and Max Daily limits
 - *TSS* : Monthly Average and Max Daily limits
 - *NH₃-N*: Monthly Average and Max Daily limits
 - *Fecal Coliform*: Monthly Average and Max Daily limits
- **Corrective Actions taken by BCPSSD**
 - 1) In November 2009, the District hired TetraTech as a consultant. Ronald Schuyler with TetraTech performed an extensive evaluation of all of the District's facilities and determined that operational errors and inefficiencies were preventing many of the District's facilities from consistently complying with their WV/NPDES permits. The District retained Mr. Schuyler to conduct a comprehensive training program for all of the District's operators. This training program included on-site training and evaluation for all of the District's operators at every District facility. This training program was completed on or about December 31, 2010. The operator training addressed nearly all of the compliance issues at the District's package plants that were registered under General Permit Number WV0103110.
 - 2) The District shut down the Falling Waters WWTP. Work began on collection system improvements to route flow away from this facility on October 31, 2012. All of the necessary work was completed and Falling Waters WWTP was completely shut down and decommissioned on March 31, 2013.

Count IV of WVDEP's Complaint alleges discharge limit violations at the Forest Heights WWTP, which is operated by the District pursuant to Permit Number WV0105830.

Alleged violations at the Forest Heights WWTP include violations for:

- *BOD₅* : Monthly Average and Max Daily limits
- *TSS* : Monthly Average and Max Daily limits
- *NH₃-N*: Monthly Average and Max Daily limits
- *Fecal Coliform*: Monthly Average and Max Daily limits

• Corrective Actions taken by BCPSSD

- 1) In November 2009, the District hired TetraTech as a consultant. Ronald Schuyler with TetraTech performed an extensive evaluation of all of the District's facilities and determined that operational errors and inefficiencies were preventing many of the District's facilities from consistently complying with their WV/NPDES permits. The District retained Mr. Schuyler to conduct a comprehensive training program for all of the District's operators. This training program included on-site training and evaluation for all of the District's operators at every District facility. This training program was completed on or about December 31, 2010. The operator training improved the performance of the Forest Heights facility, but did not address all of the compliance issues described above.
- 2) The District completed a comprehensive overhaul of the Forest Heights WWTP in summer of 2011. The District installed new diffusers, a new surge tank pump and a splitter box that adjusts directs flow between the two treatment units that make up the Forest Heights WWTP. Construction and installation of these upgrades began on May 1, 2011 and was completed on June 1, 2011. These facility upgrades and the operator training greatly improved the Forest Heights facility's

treatment and compliance efforts for nearly all of the parameters listed in Count IV of the Complaint.

B. BCPSSD Compliance Schedule

The District prepared and submitted applications for funding to finance system-wide improvements that will bring all the District's facilities into compliance with current WV/NPDES Permit limits as well as forthcoming nutrient limits established by the Chesapeake Bay TMDL. The District applied for a total of approximately \$48,000,000.00; \$11,000,000.00 in funding pursuant to Senate Bill 245 and \$37,000,000.00 from the West Virginia State Revolving Fund. The District submitted these applications on or about June 1, 2012. On or about June 19, 2012, the District submitted detailed plans and specifications for the proposed system-wide improvements to the WVDEP. These upgrades are described in detail below. BCPSSD has also completed the following:

DATE	ACTIVITY
On December 19, 2013	The District filed an Application for Certificate of Convenience and Necessity with the West Virginia Public Service Commission, seeking PSC approval of the District's system-wide improvements that will bring all the District's facilities into compliance with current WV/NPDES Permit limits as well as forthcoming nutrient limits established by the Chesapeake Bay TMDL.
On or about May 28, 2014	The District submitted a final major permit modification application to the WVDEP. This modification was subject to the prior review and approval of WVDEP and includes system-wide upgrades that are described in detail below.
On or before November 1, 2014	The District shall advertise for bids for the construction of system-wide improvements that are designed to bring all of the District's facilities into compliance with current WV/NPDES Permit limits as well as the forthcoming

nutrient limits established by the Chesapeake Bay TMDL. System-wide improvements include:

- **New pipeline and pump station modifications that will divert flow from the OH WWTP to the North End WWTP;**
- **North End WWTP: Enhanced biological treatment (ballasted flocculation with chemical addition) with the construction of two additional treatment basins and anaerobic selectors;**
- **Baker Heights WWTP: Enhanced biological treatment (ballasted flocculation with chemical addition) with the equipping of two additional treatment basins and anaerobic selectors;**
- **Inwood WWTP: Enhanced biological treatment (ballasted flocculation with chemical addition) with the equipping of two additional treatment basins and anaerobic selectors;**
- **Opequon Hedgesville: Enhanced biological wastewater treatment (ballasted flocculation with chemical addition) and anaerobic selectors.**

On or before November 30, 2014 **The District shall submit a progress report which identifies the actions the District has taken and any additional actions that will be taken that will result in compliance with the District's NPDES Permits.**

On or before December 15, 2014 **The District shall acquire 100% of the right of ways and easements that will be required for the District's system-wide improvements described above.**

On or before December 15, 2014 **The District shall open bids for the construction of system-wide improvements described above. Written verification of this completed milestone shall be provided to the WVDEP.**

On or before February 15, 2015 **The District shall close on the required loans and award construction contracts for the construction of the system-wide improvement described above.**

On or before March 1, 2015 **The District shall begin the construction of system-side improvements described above in order to achieve compliance with the District's NPDES Permits. Written verification of this completed milestone shall be provided to the WVDEP.**

On or before April 30, 2015 **The District shall submit a progress report which identifies the actions the District has taken and any additional actions that will be taken that will result in compliance with the District's NPDES Permits.**

- On or before July 31, 2015 The District shall have a full-scale temporary ballasted flocculation system installed at the OH WWTP in order to comply with the District's NPDES Permit during the construction process.
- On or before August 31, 2015 The District shall submit a progress report which identifies the actions the District has taken and any additional actions that will be taken that will result in compliance with the District's NPDES Permits.
- On or before September 31, 2015 The District shall complete the construction of collection system improvement, specifically the diversion of flow from OH WWTP to North End WWTP, in order to achieve compliance with the District's NPDES Permits. Written verification of this completed milestone shall be provided to the WVDEP.
- On or before October 31, 2015 The District shall complete the construction of the chemical storage and feed components at the four wastewater treatment plants to provide chemical nutrient removal to comply with the District's NPDES Permits.
- On or before December 31, 2015 The District shall achieve compliance with all of the District's NPDES Permits.

INTERIM EFFLUENT LIMITATIONS

Until December 31, 2015, or such later date determined by WVDEP to be reasonable and appropriate after evaluating the progress of upgrades and improvements set forth above in the Compliance Schedule above, BCPSSD shall comply with the following interim effluent limitations in lieu of those specified in the respective WV/NPDES Permits:

Permit No.: WV0082759: Outlet 001

a) Ammonia Nitrogen:

Interim Limits Summer (May 1 - Sept. 30)				Interim Limits Winter (October 1 - April 30)			
Monthly Average (lbs/day)	Max Daily (lbs/day)	Monthly Average (mg/l)	Max Daily (mg/l)	Monthly Average (lbs/day)	Max Daily (lbs/day)	Monthly Average (mg/l)	Max Daily (mg/l)
78.17	156.33	5.86	11.72	173.7	300	13.02	26.04

Permit No.: WV0082759: Outlet 001

a) Total Recoverable Aluminum:

Interim Limits			
Monthly Average (lbs/day)	Max Daily (lbs/day)	Monthly Average (mg/l)	Max Daily (mg/l)
n/a	n/a	0.2	0.5

Permit No.: WV0082759; Outlet 003

a) Total Recoverable Aluminum:

Interim Limits			
Monthly Average (lbs/day)	Max Daily (lbs/day)	Monthly Average (mg/l)	Max Daily (mg/l)
n/a	n/a	0.36	n/a

Except as modified above, no other interim effluent limitations are approved for the purpose of this Consent Order. All monitoring and reporting requirements shall be conducted in accordance with Defendants' WV/NPDES Permits. These interim limits shall be considered transferable to any new holder of BCPSSD's WV/NPDES Permits.

STIPULATED PENALTIES

The District shall be liable for stipulated penalties to the WVDEP for failure to comply with the requirements of the Compliance Schedule outlined above. Stipulated penalties shall accrue as follows:

<u>Period of Noncompliance</u>	<u>Penalty</u>
1 st through 15 th day	\$750 per day per violation
After 15 th day	\$1000 per day per violation

Stipulated Penalties for Effluent Violations (other than Fecal Coliform)

Daily Max Violations	\$1000
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Monthly Average Violations	≤ 300% exceedence	>300% exceedence
	\$1000	\$2000

Stipulated Penalties for Fecal Coliform Effluent Violations

All	\$1500
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Stipulated penalties shall begin immediately upon entry of this Order and shall end on December 31, 2015. If BCPSSD demonstrates that it has achieved compliance with its WV/NPDES permit requirements for four (4) consecutive reporting periods on a per parameter basis prior to December 31, 2015, Stipulated Penalties for that parameter shall end. Upon achieving full compliance for any permit requirements for four (4) consecutive reporting periods, BCPSSD shall provide written notification of its compliance to the Chief Inspector. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law.

The District shall pay the stipulated penalty assessed for any violation of this Consent Decree within 30 days of receipt of written demand by WVDEP, unless the District petitions the Circuit Court of Berkeley County and thereafter demonstrates to the satisfaction of the Circuit Court that the failure to meet any deadline or requirement in this Consent Order was due to circumstances beyond the reasonable control of District (Force Majeure).

The stipulated penalties provided herein pertain only to the requirements of this Consent Order 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 Order, the Act, or their WV/NPDES Permits. All payments to the WVDEP under this Section shall be paid by 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, at the following address:

Chief Inspector, Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

FORCE MAJEURE

If any event occurs which causes or may cause a delay in the achievement of the requirements of this Order or a violation of any provision of this Consent Order by the District, they shall notify the WVDEP in writing within thirty (30) working days of the date on which the District has knowledge or should have had knowledge that the event may or will cause a delay or 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 District to minimize the violation, and the timetable by which those measures will be implemented. The District will adopt all measures to avoid or minimize any such violation. The District shall make all efforts to identify events that cause or may cause a violation of this Consent Order.

Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Force majeure will include delays caused solely by state agencies or the State of West Virginia, where the District can demonstrate that it made timely submissions or took timely actions in accordance with the deadlines required by the Compliance Schedule outlined

above, but that subsequent deadlines cannot be met due to the inaction or untimely action of state agencies, including, but not limited to WVDEP, the West Virginia Public Service Commission, The West Virginia Infrastructure & Jobs Development Council and the West Virginia Department of Health and Human Resources.

If the WVDEP agrees that any violation of this Consent Decree is caused by circumstances reasonably beyond the control of the District, they 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 and any stipulated penalties pursuant to this Order will be waived. In the event that WVDEP does not agree, the District may submit the matter to the Circuit Court of Berkeley County for resolution of whether or not the District is entitled to relief pursuant to this Force Majeure provision. The burden of proving that any delay was caused by circumstances reasonably beyond the control of the District and the length of such delay shall rest with the District. Failure by the District 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.

OTHER PROVISIONS

1. Under this Order, BCPSSD 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, BCPSSD reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding BCPSSD 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 referenced 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. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving BCPSSD of the obligation to comply with any applicable law, permit, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject BCPSSD to additional penalties and injunctive relief in accordance with applicable law.

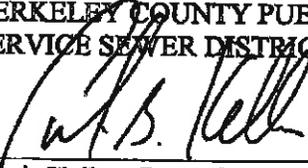
4. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.

5. To the extent that the compliance schedule dates in this Order conflict with any other administrative order, this Order will supersede and control.

6. This Order is binding on BCPSSD, its successors and assigns.

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

BERKELEY COUNTY PUBLIC
SERVICE SEWER DISTRICT



Curtis Keller, General Manager
Berkeley County Public Service Sewer District

9/18/14

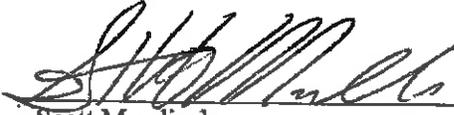
Date



Richard L. Lewis
Marc C. Bryson
Steptoe & Johnson PLLC
P. O. Box 1588
Charleston, WV 25326
(304) 353-8000
Counsel for BCPSSD

9/22/14

Date



Scott Mandirola
Director, Division of Water
and Waste Management West Virginia
Department of Environmental Protection

9/25/14

Date



Charles S. Driver
Office of Legal Services/WVDEP
601 57th Street, SE
Charleston, WV 25304
(304) 926.0499, Ext. 1448
Counsel for WVDEP

10/27/14

Date