



RECEIVED

MAR 22 2011

~~ENVIRONMENTAL~~
ENFORCEMENT

west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

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: Town of Davis
Joe Drenning, Mayor
P.O. Box 207
Davis, WV 26260

DATE: March 14, 2011

ORDER NO.: 7189

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 Town of Davis (hereinafter "Davis").

FINDINGS OF FACT

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

1. Davis operates a sewage treatment facility located in Davis, Tucker County, West Virginia. Davis was issued WV/NPDES Water Pollution Control Permit No. WV0024848 on November 30, 2010.
2. On November 12-13, 2008, West Virginia Department of Environmental Protection (WVDEP) personnel conducted a Compliance Sampling Inspection. The following violations were observed and documented:
 - a. Average monthly flows for January through April 2008 exceeded 90% of average design flow. Section C.10 of WV/NPDES Permit requires a plan of action be submitted if this occurs for three consecutive months. The required plan of action was not submitted.
 - b. Reported loadings on Discharge Monitoring Reports (DMRs) were calculated incorrectly using average monthly and maximum daily flows instead of daily flows that bracket the sampling period. This is a violation of Appendix A.III.2 of the WV/NPDES Permit.

Promoting a healthy environment.

- c. pH and DO readings were taken weekly, but only samples from the composite sampling day were reported on the DMR. All data that meets the requirements of 40 CFR Part 136 must be included on DMRs. Failure to do so is a violation of Appendix A.III.5 of the WV/NPDES Permit.
 - d. The pipe from the barscreen unit bypass is leaking and influent is flowing onto ground and flowing toward the river. Failure to properly maintain this unit is a violation of Appendix A.II.1 of the WV/NPDES Permit.
 - e. The lagoon has approximately six inches of freeboard and there are signs that wastewater has spilled over the lagoon dike. The WV Bureau of Public Health Standards (64-47) requires three (3) feet of freeboard on a lagoon. Failure to properly operate and maintain this unit is a violation of Appendix A.II.1 of the WV/NPDES Permit.
 - f. The fence was down where the new line from Tuscan Ridge was installed. This is a violation of Section C.2 of the WV/NPDES Permit.
 - g. The fecal coliform samples for February, March, August and September of 2008 were analyzed past maximum holding time. This is a violation of Section A.III.3 of the WV/NPDES Permit.
 - h. Total nitrogen and total phosphorous are required to be sampled quarterly and were not being sampled by the permittee. This is a violation of Section A.001 of the WV/NPDES Permit.
3. On September 15, 2010, WVDEP personnel conducted a Compliance Evaluation Inspection. Notice of Violation (NOV) No. W-10-47-12-202 was issued and the following violations were observed and documented:
- a. Lagoon dike in need of repair and not enough freeboard in lagoon. Failure to maintain this unit is a violation WV/NPDES Permit Appendix A.II.1.
 - b. Flowmeter in need of repair after being struck by lightning earlier in the summer. An inoperable flowmeter is a violation WV/NPDES Permit Appendix A.II.1.
 - c. The lagoon has overflowed numerous times and no spill was reported. This is a violation of WV/NPDES Permit Appendix A.IV.1.
 - d. DMR excursions, listed in Finding of Facts 4a, 4b and 4c of this Order.
 - e. Excessive duckweed in lagoon and in chlorine contact chamber. This is a violation WV/NPDES Permit Appendix A.II.1.
 - f. Discharge point needs stabilized and vegetation overgrowth needs removed. This is a violation of WV/NPDES Permit Appendix A.II.1.
4. On November 18, 2010 WVDEP personnel reviewed DMRs submitted between January 2008 and September 2010 to determine compliance with terms and conditions of its WV/NPDES permit. This review revealed numerous excursions of discharge limitations (see attachment). The excursions can be further described as follows:
- a. Thirty (30) minimum violations.
 - b. Twenty (20) moderate violations.
 - c. Three (3) major violations.
5. A meeting between WVDEP and Davis was held on February 8, 2011 to discuss the terms of this Order. Subsequent to the meeting, Davis provided financial documentation which demonstrates it has a reduced ability to pay a civil administrative penalty.

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. Davis shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of entry of this Order, Davis shall submit for approval a proposed plan of corrective action, outlining action items and completion dates for how and when Davis will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall be submitted to:

**Environmental Inspector Supervisor
NE Regional Environmental Enforcement Office
HC63 Box 2545
Romney, WV 26757**

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 Davis's permit violations, Davis shall be assessed a civil administrative penalty of three thousand nine hundred thirty dollars (\$3,930) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

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

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



Joe Drenning, Mayor
Town of Davis

3-21-2011

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Town of Davis

Receiving Stream:

Blackwater

Treatment System Design Maximum Flow: .12 mgd 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#												
			2.a	2.b	2.c	2.d	2.e	2.f	2.g	2.h	3.a	3.b	3.c	3.e	3.f
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	2	1	1
b)	Toxicity of Pollutant	0 to 3	0	0	0	1	1	1	0	0	1	1	1	1	1
c)	Sensitivity of the Environment	0 to 3	0	0	0	2	2	1	0	0	2	1	2	1	1
d)	Length of Time	1 to 3	1	1	1	2	2	1	1	1	2	1	2	1	1
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0	1	1	1	0	0	1	1	2	1	1
Average Potential for Harm Factor			0.4	0.4	0.4	1.4	1.4	1	0.4	0.4	1.4	1	1.8	1	1
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	2	1	1	2	3	1	1	2	3	2	3	1	1

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
2.a	Minor	Moderate	\$1,200	1	\$1,200
2.b	Minor	Minor	\$400	1	\$400
2.c	Minor	Minor	\$400	1	\$400
2.d	Moderate	Moderate	\$3,400	1	\$3,400
2.e	Moderate	Major	\$4,400	1	\$4,400
2.f	Minor	Minor	\$1,000	1	\$1,000
2.g	Minor	Minor	\$400	1	\$400
2.h	Minor	Moderate	\$1,200	1	\$1,200
3.a	Moderate	Major	\$4,400	1	\$4,400
3.b	Minor	Moderate	\$1,500	1	\$1,500
3.c	Moderate	Major	\$4,800	1	\$4,800
3.e	Minor	Minor	\$1,000	1	\$1,000
3.f	Minor	Minor	\$1,000	1	\$1,000
4.a	Minor	Minor	\$1,000	30	\$30,000
4.b	Minor	Moderate	\$1,500	20	\$30,000
4.c	Minor	Major	\$2,000	3	\$6,000
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
Total Base Penalty					\$91,100

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 -			\$0
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)		\$87,200	(\$87,200)
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			(\$87,170)
Penalty =			\$3,930

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:	