



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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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: Eastwood System, Inc.
Attn: Jay Cochran
P.O. Box 267
Winfield, WV 25213

DATE: November 13, 2015

ORDER NO.: 8414

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 Eastwood System, Inc. (hereinafter "Eastwood").

FINDINGS OF FACT

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

1. Eastwood operates a wastewater treatment plant located in Nitro, Putnam County, West Virginia. Eastwood was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550243, on November 18, 2013.
2. On March 7, 2014, West Virginia Department of Environmental Protections (WVDEP) and Eastwood entered into Order No. 7959. The Order was issued in response to Eastwood's failure to obtain a valid WV/NPDES permit and its creation of conditions not allowable in waters of the State. Specifically, the aforementioned facility was operated without authorization pursuant to a valid WV/NPDES from July 14, 2011 until the WV/NPDES permit reissuance on November 18, 2013.
3. On May 14, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel collected an effluent sample. Violations of the following sections of WV Legislative Rules and Eastwood's WV/NPDES permit were observed and documented:

- a. Section F.1-Eastwood failed to properly operate and maintain the plant. Specifically, the plant was septic, there was a large mat of floating debris in the aeration basin, the clarifier was turbid, and the sand beds contained ponding septic water.
- b. 47CSR2 Section 3.2.a-Eastwood created conditions not allowable in waters of the State in the form of distinctly visible suspended solids.
- c. Section B.3-Eastwood failed to submit Discharge Monitoring Reports (DMRs) for the first quarter of 2014 within twenty (20) days following the end of the reporting period.
- d. Section A- The effluent sample resulted in the following exceedances of permitted instantaneous maximum limits (Table One):
 - i. Minor: One (1) for Total Suspended Solids.
 - ii. Moderate: One (1) for Ammonia Nitrogen.
 - iii. Major: Two (2) for Biochemical Oxygen Demand and Fecal Coliform.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W14-40-377-KWS, W14-40-378-KWS, W14-40-379-KWS, and W14-40-391-KWS were issued to Eastwood.

4. On April 1, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel collected an effluent sample. Violations of the following sections of the terms and conditions of Eastwood's WV/NPDES permit were observed and documented:
 - a. Section F.1- Eastwood failed to properly operate and maintain the plant. Specifically, there were floating mats of debris in the aeration basin, there was a high sludge blanket in the clarifier, there was a soft pipe utilized for pumping to the splitter box, and there was ponding water in the sand beds.
 - b. Section B.3-Eastwood failed to submit DMRs for the second, third, and fourth quarters of 2014 within twenty (20) days following the end of the reporting period.
 - c. Section A-The effluent sample resulted in a major exceedance of the permitted instantaneous maximum limit for Total Residual Chlorine (Table One).

As a result of the aforementioned violations, NOV Nos. W15-40-450-KWS, W15-40-451-KWS, and W15-40-452-KWS were issued to Eastwood.

5. On June 9, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Eastwood's WV/NPDES permit were observed and documented:
 - a. 47CSR2 Section 3.2.a-Eastwood created conditions not allowable in waters of the State in the form of distinctly visible suspended solids.
 - b. Section F.1-Eastwood failed to properly operate and maintain the facility. Specifically, the clarifier was septic and turbid, a soft pipe was utilized for pumping to the splitter box, one sand bed had ponding septic water, one sand bed was covered with dried sludge, and the chlorine contact chamber was full of sludge.
 - c. Section B.3-Eastwood failed to submit DMRs for the first quarter of 2015 within twenty (20) days following the end of the reporting period.

As a result of the aforementioned violations, NOV Nos. W15-40-459-KWS, W15-40-460-KWS, and W15-40-461-KWS were issued to Eastwood.

6. On August 11, 2015, WVDEP personnel and a representative of Eastwood met to discuss the terms and conditions of this Order.
7. On September 1, 2015, Eastwood submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Eastwood's ability to pay a civil administrative penalty.
8. On November 13, 2015, WVDEP personnel conducted a record review and determined that Eastwood failed to submit DMRs for the following quarters, a violation of Section B.3 of its WV/NPDES permit: the 3rd quarter of 2013, the 1st, 2nd, 3rd, and 4th quarters of 2014, and the 1st, 2nd, and 3rd quarters of 2015.

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. Eastwood shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, Eastwood shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Eastwood 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. WV0103110, Registration No. WVG550243, and Order No. 8414. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

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 Eastwood's Legislative Rule and permit violations, Eastwood shall be assessed a civil administrative penalty of ten thousand dollars (\$10,000) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following payment schedule:

Payment 1 in the amount of \$833.33 due on or before January 1, 2016.
Payment 2 in the amount of \$833.33 due on or before February 1, 2016.
Payment 3 in the amount of \$833.33 due on or before March 1, 2016.
Payment 4 in the amount of \$833.33 due on or before April 1, 2016.
Payment 5 in the amount of \$833.33 due on or before May 1, 2016.
Payment 6 in the amount of \$833.33 due on or before June 1, 2016.
Payment 7 in the amount of \$833.33 due on or before July 1, 2016.
Payment 8 in the amount of \$833.33 due on or before August 1, 2016.
Payment 9 in the amount of \$833.33 due on or before September 1, 2016.
Payment 10 in the amount of \$833.33 due on or before October 1, 2016.
Payment 11 in the amount of \$833.33 due on or before November 1, 2016.
Payment 12 in the amount of \$833.37 due on or before December 1, 2016.

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. 8414 and shall be mailed to:

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

OTHER PROVISIONS

1. Eastwood 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, Eastwood 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, Eastwood 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 Eastwood 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, Eastwood 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

Eastwood becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Eastwood 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 Eastwood 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 Eastwood (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 Eastwood 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 Eastwood 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 Eastwood, its successors and assigns.
7. This Order shall terminate upon Eastwood's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


 Jay Cochran
 Eastwood System, Inc.

11-28-15
 Date

RECEIVED

Public Notice begin:

DEC 01 2015

 Date

**ENVIRONMENTAL
 ENFORCEMENT**

Public Notice end:

 Date

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

 Date

Table One: Eastwood System, Inc. Exceedance Summary

Exceedances - INSTANTANEOUS. MAX.						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
						5/14/14	Ammonia Nitrogen	mg/L
5/14/14	Biochemical Oxygen Demand	mg/L	12.5	108	764%	-	-	X
5/14/14	Total Suspended Solids	mg/L	75	112	49%	X	-	-
5/14/14	Fecal Coliform	cnts/100ml	500	60000	11900%	-	-	X
4/1/15	Total Residual Chlorine	ug/L	70	2200	3043%	-	-	X

Totals	Degree of non-compliance		
	Min	Mod	Maj
	1	1	3



Floating mats of debris in aeration basin, 5-14-14



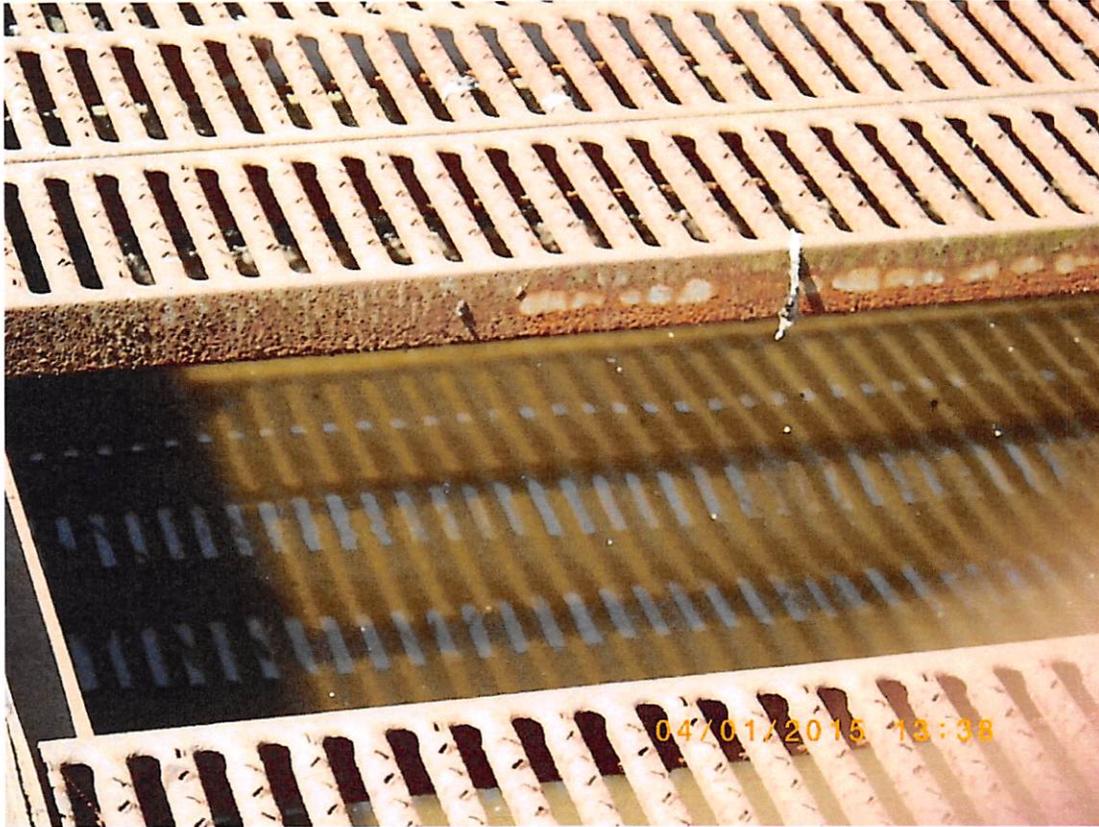
Conditions not allowable in waters of the state, 5-14-14



Ponding water on sand beds, 5-14-14



Effluent samples, 5-14-14



Sludge blanket just below surface of clarifier, 4-1-15



Sand beds ponding water, 4-1-15



Clarifier septic with floating sludge, 6-9-15



Septic water ponding on sand bed, 6-9-15



Chlorine contact chamber full of sludge, 6-9-15



Conditions not allowable in waters of the state, 6-9-15



Sand bed covered with dried sludge, 6-9-15

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Eastwood System, Inc. Receiving Stream: _____

Treatment System Design Maximum Flow: 0.018 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#													
			3a	3b	3di	3dii	3diii	4a	4c	5a	5b	8				
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1			
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	1	1	1	1	0			
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1	1	1	1	1	0			
d)	Length of Time	1 to 3	1	1	1	1	1	2	1	1	1	3	1			
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1	1	1	1	0			
Average Potential for Harm Factor			1	1	1	1	1	1.2	1	1	1	1.4	0.4	No	No	No
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	3	3	1	2	3	3	3	3	3	3	3			

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly, >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= 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
3a	Minor	Major	\$2,000	1	\$2,000
3b	Minor	Major	\$2,000	1	\$2,000
3di	Minor	Minor	\$1,000	1	\$1,000
3dii	Minor	Moderate	\$1,500	1	\$1,500
3diii	Minor	Major	\$2,000	2	\$4,000
4a	Moderate	Major	\$4,200	1	\$4,200
4c	Minor	Major	\$2,000	1	\$2,000
5a	Minor	Major	\$2,000	1	\$2,000
5b	Moderate	Major	\$4,400	1	\$4,400
8	Minor	Major	\$1,700	6	\$10,200
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					\$33,300

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		\$3,330
6.2.b.4 - Compliance/noncompliance history	25		\$8,325
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,200		\$1,200
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		10	(\$3,330)
6.2.b.5 - Ability to Pay		98.663	(\$32,855)
Penalty Adjustments			(\$23,300)
Penalty =			\$10,000

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$1,200
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	\$1,200
Comments: Avoided cost of six (6) quarters of DMR sampling/submittal.	