



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

TO: Honorable Bill Pauley, Mayor
Town of Marmet
10701 MacCorkle Avenue
Marmet, WV 25315

DATE: March 31, 2011

ORDER NO.: 7062

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 The Town of Marmet (hereinafter "Marmet").

FINDINGS OF FACT

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

1. Marmet operates and maintains a wastewater collection and treatment system, located in Marmet, Kanawha County, West Virginia. Marmet was issued WV/NPDES Water Pollution Control Permit No. WV0021750 on June 06, 2006.
2. On March 15, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel, while responding to a highway emergency on State Route 94, did observe and document that:
 - The sewage lift station that serves the nursing home had overflowed and discharged a large amount of sewage, grease and detritus. Much of the solids remained on the hillside along Route 94 and became putrefied and odoriferous, with the liquids continuing along the ditch line and into Lens Creek, a state water.
 - The lift station was no longer discharging and a partial clean-up of the area had been accomplished, but a large volume of sewage solids remained.
3. Marmet reported this outage to the WVDEP spill line on March 12, 2010.

Promoting a healthy environment.

4. On March 24, 2010, WVDEP personnel, in response to a citizens complaint of the site on Route 94, did inspect, observe and document that:
 - No additional clean up of the site had occurred.
 - Marmet in response to the WVDEP inspection of March 24, 2010, inspected the station and again reported this lift station discharging, due to a pump motor failure.
5. On March 29, 2010, Marmet reported the pump in the station had once again failed and sewage was discharging.
6. On April 6, 2010, Marmet reported the pump in the station had once again failed and sewage was discharging.
7. On April 23, 2010, WVDEP personnel did inspect, observe and document that:
 - The lift station was discharging.
 - The detritus was odoriferous and had once again built up on the hillside between the station and State Route 94.
 - Sewage was making its way along the ditch line of State Route 94 and into Lens Creek, a State Water, where it caused a plume and deposits in the bottom of the stream.
8. A portable pump for the station was installed on May 5, 2010, which corrected the discharging of the lift station at that time. The plume and deposits were cleaned from the ditch line at this time.
9. Failure of Marmet to properly operate and maintain these facilities is a violation of Section II.1, Appendix A of the permit. This violation occurred for 29 days, beginning on April 6, 2010, and ending on May 5, 2010, at the time that the portable pump was installed.
10. Deposits or sludge banks on the bottom in waters of the State, is a violation of Legislative Rule Title 47, Series 2, Section 3.2.b. (Conditions Not Allowable In State Waters).
11. A meeting between WVDEP and Marmet was held on September 2, 2010 to discuss the terms of this Order. Subsequent to the meeting, Marmet provided documentation that indicated that it had corrected the problems with its pumping stations for the nursing home. In addition, Marmet provided financial information to evaluate its ability to pay a civil administrative penalty. The financial information provided by Marmet indicates that it has the ability to pay the civil administrative penalty for the violations described within the Findings of Fact of this Order.

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. Marmet shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within ten (10) days of entry of this Order, Marmet shall submit for approval a proposed corrective action plan and schedule, outlining action items and completion dates for how and when Marmet will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The corrective action plan shall be submitted to:

**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 corrective action plan and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable corrective action plan and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of Marmet's Legislative Rule and permit violations, Marmet shall be assessed a civil administrative penalty of fifty-six thousand ten dollars (\$56,010) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule: twenty-four consecutive (24) monthly payments of \$2333.75, to begin June 15, 2011 and concluding on May 15, 2013.

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. Marmet 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, Marmet 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, Marmet 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 Marmet 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, Marmet 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 Marmet 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 Marmet 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 Marmet (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 Marmet 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 Marmet 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 Marmet, its successors and assigns.

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

Bill Pauley
Honorable Bill Pauley, Mayor
Town of Marmet

4-15-11
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 Marmet

Receiving Stream:

Lens Creek

Treatment System Design Maximum Flow: 0.5 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#											
			9	10										
a)	Amount of Pollutant Released	1 to 3	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1										
d)	Length of Time	1 to 3	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	2										
Average Potential for Harm Factor			1	1.2	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 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.

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)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease		10	(\$6,220)
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$6,190)
Penalty =			\$56,010

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:	