



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: Honorable Shelia Kessler, Mayor
Town of Matewan
P.O. Box 306
Matewan, WV 25678

DATE: March 11, 2011

ORDER NO.: 7143

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 Matewan (hereinafter "Matewan").

FINDINGS OF FACT

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

1. Matewan operates a wastewater treatment facility located in Matewan, Mingo County, West Virginia. Matewan was issued WV/NPDES Water Pollution Control Permit No. WV0024783 on April 29, 2008.
2. On December 2-3, 2009, West Virginia Department of Environmental Protection (WVDEP) personnel conducted a Compliance Sampling Inspection (CSI) at the Town of Matewan wastewater treatment facilities. During the CSI, a number of violations were observed and documented.
3. As a result of the CSI, a Notice of Violation (NOV) was issued on January 25, 2010 to Matewan for the following violations:
 - a. Reporting errors on the Discharge Monitoring reports (DMRs) for October 2009 were as follows:
 - i) BOD₅ (lbs/day) values reported were incorrect as these were calculated from the wrong flow value.

Promoting a healthy environment.

- ii) The “maximum daily” values reported for TSS (mg/l, NH₃-N (mg/l), and NH₃-N (lbs/day) were all incorrect. Values reported were “average” values not “maximum” values.
 - iii) Both TSS (lbs/day) values reported were incorrect. Reported values were neither “average” nor “maximum values”.
 - iv) TSS % removal value reported was incorrect.
 - v) Four of the five metals concentrations reported on the September 2009 DMRs were inaccurately reported due to measurement unit errors.
- b. Matewan failed to submit the required 1st quarter industrial user DMRs for the Matewan Water Treatment Plant, IU01.
- c. Matewan has failed to meet Compliance dates for developing an Inflow and Infiltration (I & I) removal program as outlined in its WV/NPDES permit, Section C.19.a-b.
- d. Matewan has failed to submit 2/year I & I removal progress reports as required by its WV/NPDES permit, Section C.19.c.
- e. Matewan has failed to meet the requirements of its WV/NPDES permit, Section C.22.a-b, which outlines compliance dates for plant upgrades to enable the permittee to meet final discharge limitations for Ammonia Nitrogen.
- f. The grit lift and one of two wedge wire sludge-drying beds were out of service at the time of the CSI. This is a failure to maintain all permitted treatment facilities in an operable condition.
4. A response to the NOV of January 25, 2010, was received by WVDEP on August 12, 2010, well beyond the 20 day response period outlined in the NOV. This response abated some, but not all, of the listed violations.
5. According to the NOV response received from Matewan on August 12, 2010, the items that have been abated include:
- a. Six reporting errors on the October 2009 DMR due to incorrect measurement units, have been corrected and resubmitted to WVDEP.
 - b. Three of the four metals reporting errors on the September 2009 DMR have been corrected. The fourth, Copper, is still incorrect.
 - c. Nine past-due IU01 DMRs for the Matewan Water Treatment Plant have been submitted to WVDEP.
6. Based upon the NOV response, the following items have not been fully addressed:
- a. The Copper value error noted in the NOV was amended in an attempt to correct the DMR. However, the subsequent conversion used in the amendment was incorrect and the DMR remains in error.

- b. A conceptual and detailed I & I removal program plan had not been submitted within the time period required in the Compliance Schedule.
 - c. WV/NPDES permit Section C.22.a - Compliance Schedule requirement has not been met.
 - d. WV/NPDES permit Section C.22.b - Compliance Schedule requirement has not been met.
 - e. While the NOV response package stated that Matewan was evaluating the wedge wire sludge drying beds, and that a portable sludge press was being utilized to remove sludge from the facility, no compliance dates were discussed to address grit and sludge removal.
7. A meeting was held on December 8, 2010 between WVDEP and Matewan to discuss the terms of this Order. Subsequent to the meeting, Matewan provided financial information which demonstrated it has the ability to pay the civil administrative penalty issued for the violations cited 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. Matewan 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, Matewan shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Matewan will achieve compliance with all terms and conditions of its WV/NPDES permit and/or pertinent laws and rules. The plan of corrective action shall be submitted to:

**Environmental Inspector Supervisor
Compliance Monitoring
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 Matewan's permit violations, Matewan shall be assessed a civil administrative penalty of eight thousand six hundred seventy dollars (\$8,670) 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:**

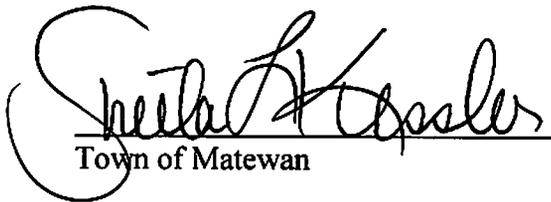
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Matewan 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, Matewan 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, Matewan 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 Matewan 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, Matewan 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 Matewan 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 Matewan 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 Matewan (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 Matewan 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 Matewan 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 Matewan, its successors and assigns.
7. This Order shall terminate upon Matewan's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


Town of Matewan

3/22/11
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:

Matewan, Town of

Receiving Stream:

Tug Fork River

Treatment System Design Maximum Flow: 0.35 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#													
			6.b.	6.c.	6.d.	6.e.										
a)	Amount of Pollutant Released	1 to 3	1	1	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1	1	1										
d)	Length of Time	1 to 3	3	3	3	3										
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1										
Average Potential for Harm Factor			1.4	1.4	1.4	1.4	No									
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	1	1	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.

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			\$0
6.2.b.3 - Cooperation with the Secretary		10	(\$960)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$930)
Penalty =			\$8,670

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:	