



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: McDowell County Board of Education
Superintendent James G. Brown
30 Central Avenue
Welch, WV 24801

DATE: July 26, 2011

ORDER NO.: 7234

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 McDowell County Board of Education (hereinafter "MCBOE").

FINDINGS OF FACT

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

1. MCBOE operates a wastewater disposal system located at/near Iaegar, McDowell County, West Virginia.
2. On December 16, 2008, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an investigation/inspection at Iaeger High School and Iaeger Elementary School to determine the method of wastewater / sewer disposal for these facilities. During the inspection, it was determined by WVDEP personnel that both schools disposed of their wastewaters by discharging them into waters of the state (Tug Fork River). Neither of the schools, nor the McDowell County Board of Education, has a WV/NPDES permit for the discharges associated with these facilities. Iaeger High School has a student and staff population of approximately 500 while Iaeger Elementary School has a population of approximately 350 staff and students. Subsequent to this inspection, Iaeger High School has been relocated to Bradshaw, WV.
 - a. The discharge from Iaeger High School was clearly sewage; having a strong sewer odor, solids, and water gray in color. This discharge caused a gray plume upon its

Promoting a healthy environment.

entry into the Tug Fork River. The MCBOE was issued the following Notices of Violation (NOVs) for the discharge.

- 1) NOV #081216-1 was issued to MCBOE for allowing the Iaeger High School sewer to flow into waters of the state without having a WV/NPDES permit. This is a violation of Chapter 22, Article 11, Section 1 et seq. of the Code of West Virginia.
 - 2) NOV #081216-2 was issued to MCBOE for Iaeger High School's discharge causing conditions not allowable in state waters, a violation of the Legislative Rule, Title 47, Series 2, Section 3 (47CSR2-3) Requirements Governing Water Quality Standards.
- b. The discharge from Iaeger Elementary School was clearly wastewater; having solids, soapsuds, and food matter. This discharge caused a plume upon its entry into the Tug Fork River, and the deposit of solids within state waters. The MCBOE was issued the following NOVs for the discharge.
- 1) NOV #081216-4 was issued to MCBOE for allowing the Iaeger Elementary School wastewater to flow into waters of the state without having a WV/NPDES permit. This is a violation of Chapter 22, Article 11, Section 1 et seq. of the Code of West Virginia.
 - 2) NOV #081216-5 was issued to MCBOE for Iaeger Elementary School's discharge causing conditions not allowable in state waters, a violation of 47CSR2-3 Requirements Governing Water Quality Standards.
3. On April 1, 2009, WVDEP issued Unilateral Order No. 6644 to MCBOE which required that:
- a. MCBOE shall immediately take all measures to initiate compliance with all pertinent laws and/or rules.
 - b. Within thirty (30) days of entry of this Order, MCBOE shall submit for approval a proposed corrective action plan and schedule, outlining how and when MCBOE will achieve compliance with all pertinent laws and rules.
 - c. Within sixty (60) days of the effective date of this Order, MCBOE shall submit an administratively complete application(s) for a valid WV/NPDES permit(s) to address the discharges from Iaeger High School and Iaeger Elementary School.
4. On December 15, 2009, WVDEP received a proposed corrective action plan from MCBOE, which included the following statement, "McDowell County School's maintenance department will perform any needed maintenance repairs, routinely pump the septic system as necessary, and perform upgrades in order to avoid any seepage of sewage being released into the nearby stream."

5. On December 21, 2009, WVDEP responded to the proposed corrective action plan by requesting the following additional information, in order to approve the proposed corrective action plan:
 - a. Daily water usage rates for each school from September to November.
 - b. Capacities of the septic tanks for each school.

This information was to have been submitted within ten (10) days of receipt of the WVDEP letter, dated December 21, 2009.

6. On January 20, 2011, WVDEP personnel conducted an inspection of Iaegar Elementary School. During the inspection, the following violation of WV State Code was observed and documented:
 - a. MCBOE unlawfully discharged untreated wastewater generated by the Iaegar Elementary School into waters of the state without a WV/NPDES permit (Chapter 22, Article 11, Section 8.b.1.).

As a result of this violation, NOV No. W11-27-110120-2-JKL was issued to MCBOE.

7. On February 18, 2011, WVDEP personnel conducted a file review for this facility. During the review, the following violation of WV State Code was documented:
 - a. MCBOE failed to comply with Order No. 6644, Order for Compliance, Section 2; in that, MCBOE has failed to submit for approval an adequate corrective action plan and schedule, outlining how and when MCBOE will achieve compliance with all pertinent laws and rules (Chapter 22, Article 11, Section 16).
8. A meeting was held between WVDEP and MCBOE on April 21, 2011 to discuss the terms 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. MCBOE shall immediately take all measures to initiate compliance with all applicable laws and/or rules.
2. Within twenty (20) days of entry of this Order, MCBOE shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when MCBOE will achieve compliance with all applicable laws and/or rules. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SE Regional Environmental Enforcement Office
254 Industrial Drive
Oak Hill, WV 25901**

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 MCBOE's West Virginia Code and Legislative Rule violations, MCBOE shall be assessed a civil administrative penalty of nine thousand eight hundred thirty dollars (\$9,830) 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. MCBOE 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, MCBOE 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, MCBOE 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 MCBOE 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, MCBOE 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 MCBOE 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 MCBOE 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 MCBOE (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 MCBOE 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 MCBOE 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 MCBOE, its successors and assigns.
7. This Order shall terminate upon MCBOE's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



James G. Brown
McDowell County Board of Education

8-2-11

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:

MCBOE

Receiving Stream:

Tug Fork River

Treatment System Design Maximum Flow: 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.b.1.	2.b.2.	6.a.	7.a.									
a)	Amount of Pollutant Released	1 to 3	1	1	1	1									
b)	Toxicity of Pollutant	0 to 3	0	2	0	0									
c)	Sensitivity of the Environment	0 to 3	0	1	1	0									
d)	Length of Time	1 to 3	1	1	3	3									
e)	Actual Exposure and Effects thereon	0 to 3	0	1	0	0									
Average Potential for Harm Factor			0.4	1.2	1	0.8	No								
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 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.

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			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$9,830

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:	