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: Braxton County Board of Education
Brenda Wells, Director of Supportive Services
4511 North Hill Rd.
Sutton, WV 26601

DATE: February 19, 2014

ORDER NO.: 7858

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 Braxton County Board of Education (hereinafter "Braxton County BOE").

FINDINGS OF FACT

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

1. Braxton County BOE operates a sewage treatment facility located in Frametown, Braxton County, West Virginia. Braxton County BOE was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No.WVG551184, on January 5, 2006 and May 20, 2012.

2. On January 10, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection a violation of the following section of the terms and conditions of Braxton County BOE's WV/NPDES permit was observed and documented:

    a. Section B.1. – The Permittee failed to properly submit discharge monitoring reports (DMRs) to WVDEP.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W12-04-0110-GCM was issued to Braxton County BOE.

3. On February 7, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Braxton County BOE's WV/NPDES permit were observed and documented:

    a. Section B.1. – The Permittee failed to properly submit DMRs to WVDEP. 2011 and 3rd quarter 2012 DMRs were not submitted.
    b. Section H.5. – The Permittee failed to properly submit sewage sludge management reports to WVDEP. 2011 and 2012 reports were not submitted.

    As a result of the aforementioned violations, NOV No. W13-04-0207-GCM was issued to Braxton County BOE.

4. On March 14, 2013, WVDEP personnel conducted a review of facility records from the time period of April, 2011 through March, 2013. During this review, the following violations of the terms and conditions of Braxton County BOE's WV/NPDES permit were observed:

    a. Section A.1. - Seventeen (17) exceedances of Braxton County BOE's permit parameters were observed and documented (Table One). These exceedances can be further defined as:
    i. Minor violations - Three (3)
    ii. Moderate violations - Six (6)
    iii. Major violations - Eight (8)

5. On July 10, 2013, WVDEP personnel and representatives of Braxton County BOE met to discuss the terms and conditions of this Order.

6. On November 14, 2013, Braxton County BOE submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Braxton County BOE's 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. Braxton County BOE shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.

2. Within twenty (20) days of the effective date of this Order, Braxton County BOE shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Braxton County BOE will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0103110,

Registration No.WVG551184, and Order No. 7858. 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 Braxton County BOE's permit violations, Braxton County BOE shall be assessed a civil administrative penalty of eighteen thousand two hundred thirty dollars ($18,230) 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:

   Payment 1 in the amount of $9,115 due on or before June 1, 2014.
   Payment 2 in the amount of $9,115 due on or before June 1, 2015.

   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. and shall be mailed to:**

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

OTHER PROVISIONS

1. Braxton County BOE hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21of the Code of West Virginia. Under this Order, Braxton County BOE 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, Braxton County BOE 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 Braxton County BOE 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, Braxton County BOE 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 Braxton County BOE becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Braxton County BOE 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 Braxton County BOE 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 Braxton County BOE (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 Braxton County BOE 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 Braxton County BOE 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 Braxton County BOE, its successors and assigns.

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

Braxton County Board of Education

3/19/14
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

Table One:
Braxton County BOE DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - April/2011 through March/2013						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
3/12	TSS	mg/l	30	150	400%	-	-	X
3/12	Fecal Coliform	Cnts/100	200	6000	2900%	-	-	X
3/12	BOD5	mg/l	30	435	1350%	-	-	X
6/12	TSS	mg/l	30	45	50%	-	X	-
6/12	Fecal Coliform	Cnts/100	200	490	145%	-	X	-
6/12	TRC	ug/l	28	280	900%	-	-	X
12/12	TSS	mg/l	30	107	257%	-	X	-
12/12	BOD5	mg/l	30	64.6	115%	-	X	-
12/12	TRC	ug/l	28	1060	3686%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - April/2011 through March/2013						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
3/12	TSS	mg/l	60	150	150%	-	X	-
3/12	Fecal Coliform	Cnts/100	400	6000	1400%	-	-	X
3/12	BOD5	mg/l	60	435	625%	-	-	X
6/12	Fecal Coliform	Cnts/100	400	490	23%	X	-	-
6/12	TRC	ug/l	57	280	391%	-	X	-
12/12	TSS	mg/l	60	107	78%	X	-	-
12/12	BOD5	mg/l	60	64.6	8%	X	-	-
12/12	TRC	ug/l	57	1060	1760%	-	-	X

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	3	6	8

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Braxton County B.O.E. **Receiving Stream:** Unnamed Tributary of Elk River

Treatment System Design Maximum Flow: 0.004 **MGD**

Treatment System Actual Average Flow: Unknown **MGD** (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF# 3a	3b	4ai	4aii	4aiii								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	0	0	1	1	1								
c)	Sensitivity of the Environment	0 to 3	0	0	1	1	1								
d)	Length of Time	1 to 3	1	1	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	0	0	1	1	1								
	Average Potential for Harm Factor		0.4	0.4	1	1	1	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3	2	2	1	2	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.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

1)	Potential for Harm Factor	Factor Range	FOF#												
a)	Amount of Pollutant Released	1 to 3													
b)	Toxicity of Pollutant	0 to 3													
c)	Sensitivity of the Environment	0 to 3													
d)	Length of Time	1 to 3													
e)	Actual Exposure and Effects thereon	0 to 3													
	Average Potential for Harm Factor		No	No	No	No	No	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3													

		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	Moderate	$1,200	5	$6,000
3b	Minor	Moderate	$1,200	2	$2,400
4ai	Minor	Minor	$1,000	3	$3,000
4aii	Minor	Moderate	$1,500	6	$9,000
4aiii	Minor	Major	$2,000	8	$16,000
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
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					$36,400

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		$3,640
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)		50	($18,200)
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	($3,640)
6.2.b.5 - Ability to Pay			$0
Penalty Adjustments			**($18,170)**
Penalty =			**$18,230**

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:	