



west virginia department of environmental protection

Division of Water and Waste Management
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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: Dan Minney, Director of Finance
Calhoun BOE
540 Allan B Mollohan Dr.
Mt. Zion, WV 26151

DATE: March 12, 2014
ORDER NO.: 7626

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 Calhoun Board of Education-Pleasant Hill Elementary (hereinafter "PHE").

FINDINGS OF FACT

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

1. Calhoun County Board of Education operates a package plant for Pleasant Hills Elementary School in Calhoun County, West Virginia. PHE was issued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration Number WVG551235, on September 28, 2011.
2. On March 16, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of PHE's WV/NPDES permit were observed and documented:
 - a. Section A – The permittee exceeded discharge limits.
 - b. Section F.1 – The permittee failed to properly operate and maintain the facility. There was a large amount of foam on the aeration basin and an unacceptable amount of solids in chlorine contact tank.
 - c. Section G.13 – The permittee failed to collect additional samples for Total Nitrogen and Total Phosphorus.

Promoting a healthy environment.

d. Section B.3 – The permittee failed to submit DMRs within the required time frame.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W12-07-013-MAZ, W12-07-014-MAZ, and W12-07-015-MAZ, and W12-07-018-MAZ were issued to PHE.

3. On October 29, 2012, WVDEP personnel and representatives of PHE met to discuss the terms and conditions of this Order. During the meeting, PHE represented that it would submit all missing DMRs. In addition, PHE represented that it would provide financial documents required for analysis of its ability to pay a civil administrative penalty.
4. On November 13, 2012, PHE submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated PHE's ability to pay a civil administrative penalty.
5. On December 17, 2012, WVDEP personnel conducted a review of facility records from the time period of January 2010 through October 2012. During this review, the following violations of the terms and conditions of PHE's WV/NPDES permit were observed:
 - a. Section A - Twenty-eight (28) exceedances of PHE's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations - ten (10)
 - ii. Moderate violations - fourteen (14)
 - iii. Major violations - four (4)
 - b. Section B.3 – Contrary to PHE's representation, the permittee failed to submit missing DMRs subsequent to the October 29, 2012 meeting; therefore, WVDEP personnel visited the PHE office to retrieve missing DMRs. The following DMRs were not submitted within the required time frame: 3rd quarter 2010, 4th quarter 2010, 1st quarter 2011, 2nd quarter 2011, 1st quarter 2012, 2nd quarter 2012, and 3rd quarter 2012.
6. On March 11, 2014, WVDEP personnel and a representative of PHE met to discuss the terms and conditions of this Order. During the meeting, PHE submitted current financial documents. The provided information was used to perform an economic analysis which evaluated PHE's ability to pay a civil administrative penalty.
7. On March 11, 2014, WVDEP personnel conducted a review of facility records from the time period of November 2012 through December 2013. During this review, the following violations of the terms and conditions of PHE's WV/NPDES permit were observed:
 - a. Section A – Thirty-five (35) exceedances of PHE's permit parameters were observed and documented (Table 2). These exceedances can be further defined as:
 - i. Minor violations - ten (10)
 - ii. Moderate violations - thirteen (13)
 - iii. Major violations - twelve (12)

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. PHE shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. PHE shall immediately begin submittal of DMRs in accordance with the terms of its WV/NPDES permit.
3. Within thirty (30) days of the effective date of this Order, PHE shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when PHE will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Region 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.

4. Because of PHE's permit violations, PHE shall be assessed a civil administrative penalty of fourteen thousand two hundred forty dollars (\$14,240) 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 \$7,120 due on or before May 1, 2014.

Payment 2 in the amount of \$7,120 due on or before August 1, 2014.

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



Dan Minney, Director of Finance
Calhoun BOE

3-13-2014

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

Table One:
PHE DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - January 2010 through October 2012									
Date	Parameter	Units	Reported		% Exceedance	Min	Mod	Maj	Degree of non-compliance
			Permitted	avg. monthly					
1st 2010	BOD	mg/L	10	23.2	132%	X	-	-	-
1st 2010	TSS	mg/L	30	94	213%	X	-	-	-
1st 2010	Fecal	cnis / 100 ml	200	5800	2800%	-	-	X	-
2nd 2010	BOD	mg/L	5	8.3	66%	X	-	-	-
2nd 2010	NH3N	mg/L	3	6.5	117%	X	-	-	-
3rd 2011	BOD	mg/L	5	16.8	236%	X	-	-	-
3rd 2011	NH3N	mg/L	3	13.9	363%	-	-	X	-
4th 2011	TSS	mg/L	30	51.4	71%	X	-	-	-
4th 2011	NH3N	mg/L	6	6.8	13%	X	-	-	-
1st 2012	BOD	mg/L	10	63	530%	-	-	X	-
1st 2012	TSS	mg/L	30	107.5	258%	-	-	X	-
1st 2012	NH3N	mg/L	6	12.3	105%	-	-	X	-
2nd 2012	NH3N	mg/L	3	9.2	207%	-	-	X	-
3rd 2012	BOD	mg/L	5	5.8	16%	X	-	-	-

Outlet 001 DMR Exceedances - MAX. DAILY - January 2010 through October 2012									
Date	Parameter	Units	Reported		% Exceedance	Min	Mod	Maj	Degree of non-compliance
			Permitted	max. daily					
1st 2010	BOD	mg/L	20	23.2	16%	X	-	-	-
1st 2010	TSS	mg/L	60	94	57%	X	-	-	-
1st 2010	Fecal	cnis / 100 ml	400	5800	1350%	-	-	X	-
2nd 2010	NH3N	mg/L	6	6.5	8%	X	-	-	-
3rd 2011	BOD	mg/L	10	16.8	68%	X	-	-	-
3rd 2011	NH3N	mg/L	6	13.9	132%	X	-	-	-
1st 2012	BOD	mg/L	20	63	215%	-	X	-	-
1st 2012	TSS	mg/L	60	107.5	79%	X	-	-	-
1st 2012	NH3N	mg/L	12	12.3	3%	X	-	-	-
2nd 2012	NH3N	mg/L	6	9.2	53%	X	-	-	-

Outlet 001 DMR Exceedances - pH MAX. DAILY (Min) - January 2010 through October 2012									
Date	Parameter	Units	Reported		% Exceedance	Min	Mod	Maj	Degree of non-compliance
			Permitted	min. daily					
3rd 2012	pH	S.U.	6.0	4.3	226.7%	-	X	-	-

Outlet 001 DMR Exceedances - D.O. INSTANTANEOUS, MIN. - January 2010 through October 2012									
Date	Parameter	Units	Reported		% Exceedance	Min	Mod	Maj	Degree of non-compliance
			Permitted	min. daily					
1st 2010	D.O.	mg/l	6.0	3.9	35.0%	-	X	-	-
3rd 2011	D.O.	mg/l	6.0	4.1	31.7%	X	-	-	-
3rd 2012	D.O.	mg/l	6.0	2.1	65.0%	-	X	-	-

Outlet 001 Totals				
Degree of non-compliance		10	14	4
Min	Mod	Maj		
-	-	-	-	-

Table Two:
PHE DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - November 2012 - December 2013						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
12/31/12	BOD, 5-Day 20 Deg. C	mg/L	10	48.2	382%	-	-	X
3/31/13	BOD, 5-Day 20 Deg. C	mg/L	10	45.5	355%	-	-	X
6/30/13	BOD, 5-Day 20 Deg. C	mg/L	5	70.9	1318%	-	-	X
9/30/13	BOD, 5-Day 20 Deg. C	mg/L	5	69.5	1290%	-	-	X
12/31/13	BOD, 5-Day 20 Deg. C	mg/L	10	76.6	666%	-	-	X
3/31/13	Total Suspended Solids	mg/L	30	41.4	38%	X	-	-
9/30/13	Total Suspended Solids	mg/L	30	62	107%	-	X	-
12/31/13	Total Suspended Solids	mg/L	30	124	313%	-	-	X
12/31/12	Ammonia Nitrogen	mg/L	6	14.36	139%	-	X	-
3/31/13	Ammonia Nitrogen	mg/L	6	20.22	237%	-	X	-
6/30/13	Ammonia Nitrogen	mg/L	3	8.21	174%	-	X	-
12/31/13	Ammonia Nitrogen	mg/L	6	8.24	37%	X	-	-
12/31/12	Fecal Coliform	Cnts/100ml	200	1014	407%	-	-	X
3/31/13	Fecal Coliform	Cnts/100ml	200	4800	2300%	-	-	X
9/30/13	Fecal Coliform	Cnts/100ml	200	500	150%	-	X	-
12/31/13	Fecal Coliform	Cnts/100ml	200	818	309%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - November 2012 - December 2013						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
12/31/12	BOD, 5-Day 20 Deg. C	mg/L	20	48.2	141%	-	X	-
3/31/13	BOD, 5-Day 20 Deg. C	mg/L	20	45.5	128%	-	X	-
6/30/13	BOD, 5-Day 20 Deg. C	mg/L	10	70.9	609%	-	-	X
9/30/13	BOD, 5-Day 20 Deg. C	mg/L	10	69.5	595%	-	X	-
12/31/13	BOD, 5-Day 20 Deg. C	mg/L	20	76.6	283%	-	X	-
9/30/13	Total Suspended Solids	mg/L	60	62	3%	X	-	-
12/31/13	Total Suspended Solids	mg/L	60	124	107%	-	X	-
12/31/12	Ammonia Nitrogen	mg/L	12	14.38	20%	X	-	-
3/31/13	Ammonia Nitrogen	mg/L	12	20.22	69%	X	-	-
6/30/13	Ammonia Nitrogen	mg/L	6	8.21	37%	X	-	-
12/31/12	Fecal Coliform	Cnts/100ml	400	1014	154%	-	X	-
3/31/13	Fecal Coliform	Cnts/100ml	400	4800	1100%	-	-	X
9/30/13	Fecal Coliform	Cnts/100ml	400	500	25%	X	-	-
12/31/13	Fecal Coliform	Cnts/100ml	400	818	105%	-	X	-

Outlet 001 DMR Exceedances - pH MAX. DAILY (Min.) - November 2012 - December 2013						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
12/31/12	pH	S U	6.0	5	133.3%	-	X	-
9/30/13	pH	S U	6.0	5.8	26.7%	X	-	-

Outlet 001 DMR Exceedances - pH MAX. DAILY (Max.) - November 2012 - December 2013						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
3/31/13	pH	S U	9.0	9.3	40.0%	X	-	-

Outlet 001 DMR Exceedances - D.O. INSTANTANEOUS, MIN. - November 2012 - December 2013						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
6/30/13	D.O.	mg/l	6.0	1.2	80.0%	-	-	X
9/30/13	D.O.	mg/l	6.0	5.8	3.3%	X	-	-

Outlet 001 Totals						Degree of non-compliance		
						Min	Mod	Maj
						10	13	12

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Calhoun BOE - PHE Receiving Stream: Unknown

Treatment System Design Maximum Flow: 0.009 MGD

Treatment System Actual Average Flow: N/E MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			2b	2c	5aii	5aiii	7ai	7aii	7aiii						
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1						
b)	Toxicity of Pollutant	0 to 3	0	0	1	1	1	1	1						
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1	1						
d)	Length of Time	1 to 3	1	1	1	1	1	1	1						
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1						
Average Potential for Harm Factor			0.8	0.8	1	1	1	1	1	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	2	2	2	3	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.

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		\$7,380
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)		40	(\$29,520)
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		50.745	(\$37,450)
Penalty Adjustments			(\$59,560)
Penalty =			\$14,240

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:	