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west virginia department of environmental protection

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Division of Water and Waste Management  
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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

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

TO: City of Mannington  
Honorable Robert Garcia, Mayor  
206 B Main St.  
Mannington, WV 26582

DATE: February 3, 2014

ORDER NO.: 7965

**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 City of Mannington (hereinafter "Mannington").

**FINDINGS OF FACT**

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

1. Mannington operates a wastewater treatment facility located in Mannington, Marion County, West Virginia. Mannington was reissued WV/NPDES Water Pollution Control Permit No. WV0024953 on September 25, 2008 and August 31, 2013.
2. On September 25, 2008, West Virginia Department of Environmental (WVDEP) issued Administrative Order No. 6443 to Mannington in response to the following violations:
  - a. Mannington failed to submit a Plan of Action to WVDEP stating how it would maintain required levels of effluent flow when the average monthly effluent flow reached or exceeded 0.225 MGD during three (3) consecutive months.
  - b. Mannington exceeded ammonia nitrogen limits multiple times from July 2001 to June 2008.

The Order required Mannington to submit the following:

- a. A detailed report which identified the causes of excessive effluent flow values, actions/steps taken, and changes made to achieve compliance with effluent flow values.
- b. A Plan of Action that included an analysis of current hydraulic and organic loadings on the plant, an analysis of the future projected loadings, a schedule of tasks to accomplish, procedures necessary to maintain required treatment levels, and the corrective actions and measures needed to prevent recurrence of ammonia nitrogen violations and excessive flows.
- c. Quarterly progress reports identifying steps taken by the permittee to achieve compliance with the terms and conditions of its permit and Order No. 6443.

Upon review, WVDEP personnel determined that Mannington failed to submit these documents.

3. On March 10, 2009, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of Mannington's WV/NPDES permit was observed and documented:
  - a. Appendix A.II.1 -The permittee failed to properly operate and maintain both pumps at the Pyles Avenue Lift Station. Specifically, one pump was inoperable for over a month, and another pump was being fixed during the inspection. No back up pumps were available.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W-NW-KAP-031009-001 was issued to Mannington.

4. On November 18, 2009, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Mannington's WV/NPDES permit were observed and documented:
  - a. Appendix A.III.6 - The permittee failed to keep and maintain operation and maintenance records. Specifically, records of lift stations and all requisite appurtenances were not properly kept.
  - b. Section C.22 - The permittee failed to submit quarterly written reports detailing actions performed in relation to the implementation and accomplishments of the inflow and infiltration elimination program.
  - c. Section C.15 - The permittee failed to submit a plan of action which prescribed measures it would take to comply with the final Total Recoverable Copper limits.
  - d. Appendix A.II.1 - The permittee failed to properly operate and maintain the facility. Specifically, blowers for the aerated sludge holding tank were not in operation, one of the two rotors in the oxidation ditch was non-operational, and the emergency backup generator for lift station No. 2 was out of service.
  - e. Appendix A.III.3 - The permittee exceeded pH holding time included in the latest edition of Code of Federal Regulations 40CFR136.

As a result of the aforementioned violations, NOV No. W-SW-TJA-012610-001 was issued to Mannington.

5. On May 5, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Mannington's WV/NPDES permit were observed and documented:
  - a. Section A.001 - The permittee exceeded discharge limitations. A review of Discharge Monitoring Reports (DMRs) from January 2011 to April 2013 revealed fifteen (15) excursions.
  - b. Section C.22 - The permittee failed to submit quarterly written reports detailing actions performed in relation to the implementation and accomplishments of the inflow and infiltration elimination program.
  - c. Appendix A.II.1 - The permittee failed to properly operate and maintain the facility. Specifically, blowers for the aerated sludge holding tank were not in operation, one of the two rotors in the oxidation ditch was non-operational during the inspection, and the emergency backup generator for lift station No. 2 was out of service.

As a result of the aforementioned violations, NOV Nos. W-NW-JME-061013-001 and W-NW-JME-061013-002 were issued to Mannington.

6. On June 10, 2013, WVDEP personnel conducted a review of facility records from the time period of January 2011 through April 2013. During this review, the following violations of the terms and conditions of Mannington's WV/NPDES permit were observed:
  - a. Section A.001 - Fifteen (15) exceedances of Mannington's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
    - i. Minor violations- Three (3)
    - ii. Moderate violations- Seven (7)
    - iii. Major violations- Five (5)
7. On December 12, 2013, WVDEP personnel and representatives of Mannington met to discuss the terms and conditions of this Order.
8. On December 17 and 18, 2013, WVDEP personnel conducted a Compliance Sampling Inspection (CSI) of the facility. During the inspection, the following violation of the terms and conditions of Mannington's WV/NPDES permit was observed and documented:
  - a. Appendix A.II.1 - The permittee failed to properly operate and maintain the facility. Specifically, the gearbox and bearing for the oxidation ditch brush aerator nearest to the office building was out of service.

As a result of the aforementioned violation, NOV No. CM-TJA-121813-001 was issued to Mannington.

**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. Mannington shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of the effective date of this Order, Mannington shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Mannington will achieve compliance with all terms and conditions of its WV/NPDES permit. This plan shall include, but not be limited to, the following:
  - a. A detailed timeline and description of methods used to accomplish proper operation and maintenance of the facility and all requisite appurtenances.
  - b. All documents required by aforementioned Order No. 6443, including:
    - i. A detailed report which identifies the causes of excessive effluent flow values, action/steps that will be taken, and changes that will be made in order to achieve compliance with effluent flow values.
    - ii. An analysis of current hydraulic and organic loadings on the plant, an analysis of future projected loadings, a schedule of tasks to accomplish, procedures necessary to maintain required treatment levels, and the corrective actions and measures needed to prevent recurrence of ammonia nitrogen violations and excessive flows.

The plan of corrective action shall make reference to WV/NPDES Permit No. WV0024953 and Order No. 7965. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
NW Regional Environmental Enforcement Office  
2031 Pleasant Valley Road  
Fairmont, WV 26554**

A copy of this plan shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> 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 Mannington's permit violations, Mannington shall be assessed a civil administrative penalty of twenty-one thousand five hundred ninety-five dollars (\$21,595) 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 \$7,198.33 due on or before April 1, 2014.

Payment 2 in the amount of \$7,198.33 due on or before May 1, 2014.

Payment 3 in the amount of \$7,198.34 due on or before June 1, 2014.

**Payment shall include a reference to the Order No. and shall be mailed to:**

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

#### **OTHER PROVISIONS**

1. Mannington 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, Mannington 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, Mannington 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 Mannington 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, Mannington 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 Mannington becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Mannington 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 Mannington 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 Mannington (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 Mannington 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 Mannington 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 Mannington, its successors and assigns.
7. This Order shall terminate upon Mannington's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
Honorable ~~Robert Garcia~~, Mayor  
City of Mannington

02-05-2014  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date



December 17 and 18, 2013 - Gearbox and bearing damage at brush aerator for oxidation ditch

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:**

Town of Mannington

**Receiving Stream:**

Buffalo Creek

**Treatment System Design Maximum Flow:** 0.25 MGD

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

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			5b	6a.i	6a.ii	6a.iii									
a)	Amount of Pollutant Released	1 to 3	1	1	1	1									
b)	Toxicity of Pollutant	0 to 3	0	1	1	1									
c)	Sensitivity of the Environment	0 to 3	0	1	1	1									
d)	Length of Time	1 to 3	1	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	0	1	1	1									
<b>Average Potential for Harm Factor</b>			0.4	1	1	1	No								
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>													
	Degree of Non-Compliance	1 to 3	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 -	15		\$3,405
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	(\$2,270)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,270)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>(\$1,105)</b>
<b>Penalty =</b>			<b>\$21,595</b>

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	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b>	