



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
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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: City of Mount Hope
c/o John H. Shumate Jr.
PO Drawer 231 – 526 Main Street
Mount Hope, WV 25880

DATE: September 19, 2016

ORDER NO.: 8587

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 Mount Hope (hereinafter “Mount Hope”).

FINDINGS OF FACT

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

1. Mount Hope operates a Publicly Owned Treatment Works located in Mt. Hope, Fayette County, West Virginia. Mount Hope was reissued WV/NPDES Water Pollution Control Permit No. WV0021776 on June 30, 1999, July 13, 2004, April 24, 2009, and March 19, 2014.
2. On May 13, 2004, West Virginia Department of Environmental Protection (WVDEP) and Mount Hope entered into Consent Order No. 5411. The Order was issued in response to Mount Hope’s fifty-two (52) bypasses/upsets at the aforementioned POTW from March 1, 2002 through March 25, 2003. The Order required Mount Hope to implement an aggressive program to identify and eliminate sources of inflow and infiltration (I&I) with the goal of eliminating the discharge of untreated wastewater and hydraulic surging of the treatment plant. The I&I plan was required to include a compliance schedule for obtaining these goals in no more than thirty-six (36) months.
3. On September 22, 2009, WVDEP personnel approved Mount Hope’s Five Year Correction Plan, dated August 11, 2009. This correspondence also included an

Amendment to Order No. 5411, which required that Mount Hope adhere to the Target Completion Dates in its approved Plan.

4. On December 9, 2015, WVDEP personnel met with representatives of Mount Hope to discuss compliance with Order No. 5411. WVDEP personnel determined that Mount Hope failed to adhere to the Target Completion Dates in the aforementioned approved August 11, 2009 Five Year Correction Plan. In accordance with the terms and conditions of the Order, WVDEP personnel subsequently demanded stipulated penalties for Mount Hope's failure to meet the Target Completion Dates.
5. On February 25, 2016, WVDEP personnel conducted a review of bypasses reported by Mount Hope from the time period of January 1, 2014 through December 31, 2015. During this period, a total of nineteen (19) bypasses occurred on the following dates: 2/3/2014, 2/19/2014, 4/3/2014, 5/15/2014, 6/20/2014, 7/1/2014, 8/22/2014, 10/7/2014, 10/8/2014, 3/4/2015, 3/10/2015, 4/4/2015, 4/6/2015, 4/14/2015, 5/18/2015, 7/4/2015, 7/14/2015, 9/9/2015, and 9/29/2015. Mount Hope represents that it has significantly reduced the frequency and duration of bypasses by reducing I&I; however, bypasses continue to occur. The aforementioned bypasses from points other than a permitted outfall are violations of Section C.21 and Appendix A.II.3 of Mount Hope's WV/NPDES permit.
6. On March 30, 2016, WVDEP personnel and representatives of Mount Hope met to discuss the aforementioned violations.
7. On May 12, 2016, Mount Hope submitted a Sewer System Overflow Correction Plan.
8. On April 18, 2016, Mount Hope submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Mount Hope's ability to pay a civil administrative penalty.
9. On June 23, 2016, WVDEP personnel conducted a review of facility records from the time period of May 1, 2014 through April 30, 2016. During this review, one (1) minor violation of Section A.001 of the terms and conditions of Mount Hope's WV/NPDES permit was observed (Table 1).
10. On August 31, 2016, WVDEP personnel met with representatives of Mount Hope to discuss the terms and conditions of the Order.
11. On September 7, 2016, Mount Hope submitted an updated Sewer System Overflow Correction Plan (attached) with a construction completion date of September 30, 2019. The Plan has been incorporated into this Order, and failure to adhere to the Plan and schedule is a violation 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. Mount Hope shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Upon the effective date of this Order, Mount Hope agrees to the following stipulated penalties for each instance of failure to achieve any of the seven (7) tasks outlined in the aforementioned September 7, 2016 Correction Plan. Two thousand dollars (\$2,000) shall be paid automatically, without demand, to WVDEP for deposit in the Water Quality Management Fund within ten (10) days of failure to achieve each of these tasks by the date listed in the Plan.
3. Within thirty (30) days after the scheduled completion dates of each of the seven (7) tasks outlined in the September 7, 2016 Correction Plan, Mount Hope shall submit detailed reports describing all actions taken in regard to the tasks. The reports shall be submitted to:

**WVDEP – Environmental Enforcement Inspector Supervisor
254 Industrial Drive
Oak Hill, WV 25901**

4. Mount Hope agrees to the following stipulated penalties for each future bypass from any point other than a permitted outfall, in violation of Section C.21/Appendix A.II.3 of Mount Hope's WV/NPDES permit.

Upon the effective date of the Order, two hundred dollars (\$200) shall be paid automatically, without demand, to WVDEP for deposit in the Water Quality Management Fund within ten (10) days of reporting each bypass. These stipulated penalties shall expire on September 30, 2019.

Beginning October 1, 2019, two thousand dollars (\$2,000) shall be paid automatically, without demand, to WVDEP for deposit in the Water Quality Management Fund within ten (10) days of reporting each bypass. These stipulated penalties shall continue for a period of two (2) years, and shall expire on September 30, 2021.

5. Because of Mount Hope's West Virginia Code and permit violations, Mount Hope shall be assessed a civil administrative penalty of five thousand dollars (\$5,000) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. Payments 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. Mount Hope 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, Mount Hope 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, Mount Hope 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 Mount Hope 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, Mount Hope 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 Mount Hope becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Mount Hope 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 Mount Hope 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 Mount Hope (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 Mount Hope 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 Mount Hope 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 Mount Hope, its successors and assigns.

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



Michael Kessinger, Mayor
City of Mount Hope



Date

Public Notice begin:

_____ Date

Public Notice end:

_____ Date

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

_____ Date

RECEIVED

OCT 28 2016

ENVIRONMENTAL
ENFORCEMENT

John H. Shumate, Jr.

Attorney at Law
P.O. Drawer 281 - 586 Main Street
Masonic Building
Mount Hope, West Virginia 25880

September 7, 2016

Telephone: (304) 877-5916

Fax: (304) 877-6055

State Bar No. 3392

West Virginia Department of Environmental Protection
Environmental Enforcement
601 57th Street, SE
Charleston, WV 25304

ATTN: Christopher M. Gatens
Enforcement Hearing Officer

RE: City of Mount Hope
Draft Consent Order 8587

Dear Mr. Gatens:

In furtherance of our discussions at the August 31, 2016, meeting at your office regarding Draft Consent Order 8587, please find enclosed a revised Compliance Schedule prepared by Thrasher Engineering reflecting exact expected completion dates for the City of Mount Hope Sewer System Overflow Correction Plan for inclusion in the Draft Consent Order.

Very truly yours,



John H. Shumate, Jr.
Attorney at Law

JHS/eap
Enclosure
cc: Michael Kessinger, Mayor, w/enclosure
Jeremy Bandy, Chief Inspector, w/enclosure
Wayne Morgan, Thrasher Engineering, w/enclosure

RECEIVED

SEP 8 2016

ENVIRONMENTAL
ENFORCEMENT

CITY OF MOUNT HOPE
SEWER SYSTEM OVERFLOW CORRECTION PLAN
SCHEDULE September 6, 2016

	<u>Completion</u>
• Inflow & Infiltration (I&I) Study (Smoke Testing, Flow Monitoring & Camera Investigation)	November 30, 2016
• I&I Report including sizing of EQ Basin (if required)	January 31, 2017
• Obtain Funding Recommendation from WVUDC or submit USDA RD Funding Application	March 31, 2017
• Design Modifications required to address overflows (EQ Basin and/or other improvements)	September 30, 2017
• Obtain Public Service Commission Certificate	May 31, 2018
• Bid Project	June 30, 2018
• Complete Construction	September 30, 2019

Table One: City of Mount Hope DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - May 1, 2014 through April 30, 2016						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
1/31/16	BOD, 5-Day 20 Deg. C	mg/L	10	14	40%	X	-	-

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		1	0	0

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: City of Mount Hope **Receiving Stream:** _____

Treatment System Design Maximum Flow: 0.308 MGD

Treatment System Actual Average Flow: 0.1814 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			5	9										
a)	Amount of Pollutant Released	1 to 3	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1										
d)	Length of Time	1 to 3	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	1										
Average Potential for Harm Factor			1	1	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	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 -	10		\$3,900
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		97.256	(\$37,930)
Penalty Adjustments			(\$34,000)
Penalty =			\$5,000

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: Economic benefit considered, but not applied.	