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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
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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 New Martinsville  
Honorable Keith Nelson-Mayor  
197 Main Street  
New Martinsville, WV 26155

DATE: December 23, 2015  
ORDER NO.: 8516

**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 New Martinsville (hereinafter "New Martinsville").

**FINDINGS OF FACT**

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

1. New Martinsville operates a wastewater treatment plant located in New Martinsville, Wetzel County, West Virginia. New Martinsville was reissued WV/NPDES Water Pollution Control Permit No. WV0027472 on November 30, 2012.
2. On November 3, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following section of the terms and conditions of New Martinsville's WV/NPDES permit were observed and documented:
  - a. Section A.001-Nineteen (19) exceedances of New Martinsville's permit parameters were observed and documented.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W-NW-JME-110315-001 was issued to New Martinsville.

3. On December 18, 2015, WVDEP personnel conducted a review of facility records from the time period of December 2013 through November 2015. During this review, the following violations of the terms and conditions of New Martinsville's WV/NPDES permit were observed:
  - a. Section A.001 - Twenty-one (21) exceedances of New Martinsville's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
    - i. Minor violations-Ten (10)
    - ii. Moderate violations-Eight (8)
    - iii. Major violations-Three (3)

### **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. New Martinsville 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, New Martinsville shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when New Martinsville 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. WV0027472 and Order No. 8516. 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 New Martinsville's permit violations, New Martinsville shall be assessed a civil administrative penalty of twenty-eight thousand thirty dollars (\$28,030) 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. **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. New Martinsville 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, New Martinsville 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, New Martinsville 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 New Martinsville 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, New Martinsville 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 New Martinsville becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and New Martinsville 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 New Martinsville 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 New Martinsville (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 New Martinsville 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 New Martinsville 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 New Martinsville, its successors and assigns.
7. This Order shall terminate upon New Martinsville's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

*N. Keith Nelson*

Honorable Keith Nelson-Mayor  
City of New Martinsville

*January 6, 2015*

Date

Public Notice begin:

\_\_\_\_\_

Date

Public Notice end:

\_\_\_\_\_

Date

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

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Date

*revised March 2013*

**RECEIVED**

JAN 11 2016

ENVIRONMENTAL  
ENFORCEMENT

Table One: City of Martinsville DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - Dec 2013 through Nov 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
January 2014	Copper	mg/l	0.015	0.0165	10%	X	-	-
February 2014	Copper	mg/l	0.015	0.0177	18%	X	-	-
April 2014	Copper	mg/l	0.015	0.0182	21%	X	-	-
May 2014	Copper	mg/l	0.015	0.02	33%	X	-	-
June 2014	Copper	mg/l	0.015	0.0441	194%	-	X	-
July 2014	Copper	mg/l	0.015	0.062	313%	-	-	X
September 2014	Copper	mg/l	0.015	0.0151	1%	X	-	-
December 2014	Copper	mg/l	0.015	0.04	167%	-	X	-
January 2015	Copper	mg/l	0.015	0.017	13%	X	-	-
February 2015	Copper	mg/l	0.015	0.0161	7%	X	-	-
March 2015	Copper	mg/l	0.015	0.0188	25%	X	-	-
April 2015	Copper	mg/l	0.015	0.283	1787%	-	-	X
May 2015	Copper	mg/l	0.015	0.03	100%	-	X	-
July 2015	Copper	mg/l	0.015	0.0233	55%	-	X	-
August 2015	Copper	mg/l	0.015	0.0227	51%	-	X	-
September 2015	Copper	mg/l	0.015	0.0218	45%	-	X	-
October 2015	Copper	mg/l	0.015	0.0389	159%	-	X	-
November 2015	Copper	mg/l	0.015	0.0194	29%	X	-	-

Outlet 001 DMR Exceedances - Max. Daily - Dec 2013 through Nov 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
June 2014	Copper	mg/l	0.04	0.0441	10%	X	-	-
July 2014	Copper	mg/l	0.04	0.062	55%	-	X	-
April 2015	Copper	mg/l	0.04	0.283	608%	-	-	X

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		10	8	3

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:** City of New Martinsville **Receiving Stream:** Ohio River

**Treatment System Design Maximum Flow:** 2.3 MGD

**Treatment System Actual Average Flow:** 1.6 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			3ai	3aii	3aiii									
a)	Amount of Pollutant Released	1 to 3	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	1	1									
c)	Sensitivity of the Environment	0 to 3	1	1	1									
d)	Length of Time	1 to 3	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1									
<b>Average Potential for Harm Factor</b>			1	1	1	No								
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>												
	Degree of Non-Compliance	1 to 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 -			\$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
<b>Penalty Adjustments</b>			<b>\$30</b>
<b>Penalty =</b>			<b>\$28,030</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> No economic benefit warranted.	