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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: Petersburg, City of  
Attn: Honorable Gary Michael  
PO Box 669  
Petersburg, WV 26847

DATE: April 6, 2016

ORDER NO.: 8511

**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 Petersburg, City of (hereinafter "City of Petersburg").

**FINDINGS OF FACT**

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

1. City of Petersburg operates a waste water treatment plant located in Petersburg, Grant County, West Virginia. City of Petersburg was issued WV/NPDES Water Pollution Control Permit No. WV0021792 on February 10, 2011.
2. On December 8, 2015, West Virginia Department of Environmental Protection (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 City of Petersburg's WV/NPDES permit were observed:
  - a. Section A.002 - Seventeen (17) exceedances of City of Petersburg's permit parameters were observed and documented at Outlet No. 002 (Table 1). These exceedances can be further defined as:
    - i. Minor violations-eleven (11)
    - ii. Moderate violations-six (6)

- b. Section A.IU01 - Five (5) exceedances of City of Petersburg's permit parameters were observed and documented at an industrial user, Allegheny Wood Products, Inc. (Table 1). These exceedances can be further defined as:
  - i. Moderate violations-five (5)
3. On February 10, 2016, WVDEP personnel and representatives of City of Petersburg met to discuss the terms and conditions of the Order.
4. On February 29, 2016, City of Petersburg submitted financial documents to WVDEP. The information was used to perform an economic analysis which evaluated the City of Petersburg's ability to pay a civil administrative penalty.
5. On April 5, 2016, WVDEP personnel conducted a record review and determined that Project No. 2012S-1334 has been submitted to the WV Infrastructure and Jobs Development Council (IJDC) and is awaiting bid authorization. This is an Enhanced Nutrient Removal Project that may serve to reduce or eliminate future exceedances of City of Petersburg's WV/NPDES permit limits. Enhanced nutrient removal will be achieved by upgrading City of Petersburg's existing waste water treatment plant.

### **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. City of Petersburg 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, City of Petersburg shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when City of Petersburg 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. WV0021792 and Order No. 8511. The plan of corrective action 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. Upon the effective date of this Order, City of Petersburg shall be placed on the following alternate interim limits for Outlet 002. Interim limits shall remain in effect either until

completion of the aforementioned Enhanced Nutrient Removal Project in accordance with the IJDC Project Schedule or until December 31, 2017, whichever should occur first. All other parameter limits contained within the WV/NPDES permit shall remain in full force and effect. Upon completion of the Enhanced Nutrient Removal Project or beginning January 1, 2018, whichever should occur first, City of Petersburg shall achieve compliance with all limits as detailed within the WV/NPDES permit.

<b>Parameter</b>	<b>Interim Average Monthly Limit</b>	<b>Interim Max Daily Limit</b>
Nitrogen, Nitrate Total (mg/L)	Report Only	Report Only

4. Because of City of Petersburg's permit violations, City of Petersburg shall be assessed a civil administrative penalty of two thousand five hundred dollars (\$2,500) 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:**

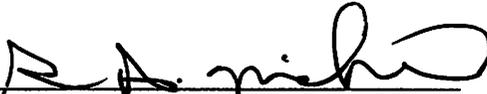
**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

#### **OTHER PROVISIONS**

1. City of Petersburg 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, City of Petersburg 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, City of Petersburg 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 City of Petersburg 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, City of Petersburg 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 City of Petersburg becomes aware of such a delay, notification shall be provided to the

Director/Chief Inspector and City of Petersburg 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 City of Petersburg 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 City of Petersburg (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 City of Petersburg 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 City of Petersburg 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 City of Petersburg, its successors and assigns.
7. This Order shall terminate upon City of Petersburg's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
\_\_\_\_\_  
Honorable Gary Michael  
City of Petersburg

4/11/16  
\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

revised March 2013

**RECEIVED**

APR 15 2016

ENVIRONMENTAL  
ENFORCEMENT

Table One: City of Petersburg DMR Exceedance Summary

Outlet 002 DMR Exceedances - AVG. MONTHLY - December/2013 through November/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
2/2014	Phosphorus, Total	lbs/year	2056	2099	2%	X	-	-
7/2014	Nitrogen, Nitrate Total	mg/l	10	11.02	10%	X	-	-
8/2014	Nitrogen, Nitrate Total	mg/l	10	12.72	27%	X	-	-
9/2014	Nitrogen, Nitrate Total	mg/l	10	21.04	110%	-	X	-
10/2014	Nitrogen, Nitrate Total	mg/l	10	11.41	14%	X	-	-
11/2014	Nitrogen, Nitrate Total	mg/l	10	14.85	49%	-	X	-
12/2014	Nitrogen, Nitrate Total	mg/l	10	12.2	22%	X	-	-
1/2015	Nitrogen, Nitrate Total	mg/l	10	10.72	7%	X	-	-
5/2015	Nitrogen, Nitrate Total	mg/l	10	12.87	29%	X	-	-
6/2015	Nitrogen, Nitrate Total	mg/l	10	12.68	27%	X	-	-
7/2015	Nitrogen, Nitrate Total	mg/l	10	11.75	18%	X	-	-
8/2015	Nitrogen, Nitrate Total	mg/l	10	15.31	53%	-	X	-
9/2015	Nitrogen, Nitrate Total	mg/l	10	15.62	56%	-	X	-
10/2015	Nitrogen, Nitrate Total	mg/l	10	14.82	48%	-	X	-
11/2015	Nitrogen, Nitrate Total	mg/l	10	13.72	37%	X	-	-

Outlet 002 DMR Exceedances - MAX. DAILY -December/2013 through November/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
7/2014	Fecal Coliform	Cnts/100m	400	1119	180%	-	X	-
9/2014	Nitrogen, Nitrate Total	mg/l	23.5	30	28%	X	-	-

Outlet IU01 DMR Exceedances - pH MAX. DAILY (Min.) - December/2013 through November/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
4/2014	pH	S.U.	5.0	4.19	241.3%		X	
5/2014	pH	S.U.	5.0	4.62	184.0%		X	
3/2015	pH	S.U.	5.0	4.29	228.0%		X	
6/2015	pH	S.U.	5.0	4.66	178.7%		X	
9/2015	pH	S.U.	5.0	4.96	138.7%		X	

Totals	Degree of non-compliance		
	Min	Mod	Maj
	11	11	0

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

City of Petersburg

Receiving Stream:

Treatment System Design Maximum Flow: 1.35 MGD

Treatment System Actual Average Flow: 0.48 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			2ai	2aii										
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										
<b>Average Potential for Harm Factor</b>			1	1	No									
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>												
	Degree of Non-Compliance	1 to 3	1	2										

**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		10	(\$2,000)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,000)
6.2.b.5 - Ability to Pay		67.65	(\$13,530)
<b>Penalty Adjustments</b>			<b>(\$17,500)</b>
<b>Penalty =</b>			<b>\$2,500</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> Economic benefit not warranted.	