



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

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: Honorable Larry Heizer, Mayor
City of Gary
PO Box 310
Gary, WV 24836

DATE: January 3, 2013

ORDER NO.: 7442

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 the City of Gary (hereinafter "Gary").

FINDINGS OF FACT

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

1. Gary operates a wastewater treatment facility and collection system located at Gary, McDowell County, West Virginia. Gary was issued WV/NPDES Water Pollution Control Permit No. WV0020044 on November 30, 2007.
2. On December 8, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the Gary wastewater treatment facility. During the inspection, the following violations of Gary's WV/NPDES permit were observed and documented. As a result of these violations, a Notice of Violation (NOV), dated December 12, 2010, was issued.
 - a. The trickling filter wastewater treatment unit was inoperable, in violation of Appendix A. II. 1.
 - b. The influent lift station had only one (1) of three (3) wastewater pumps in operation, in violation of Appendix A. II. 1.

- c. The sludge rake system for the secondary clarifier unit was turned off, in violation of Appendix A. II. 1.
 - d. This facility was not being operated by a Certified Class II Wastewater Operator, in violation of Section C.03.
 - e. An unpermitted discharge of raw sewage was observed, due to a leaking weir plate associated with the Outlet 002 discharge point, in violation of Section C.22.
 - f. Gary failed to submit discharge monitoring reports (hereinafter "DMRs") for January 2010 through June 2010, in violation of Section C.06.
 - g. This facility consistently violates the permitted discharge limitations for Percent Removal of BOD₅ and Percent Removal of TSS, in violation of Section A.001.
 - h. Gary failed to properly submit the required Quarterly I&I Reduction reports for the 2nd and 3rd quarters of 2010, in violation of Section C.21.
3. On March 1-2, 2011, WVDEP personnel conducted an inspection of the Gary wastewater treatment facility. During the inspection, the following violations of its WV/NPDES permit were observed and documented. As a result of these violations, a Notice of Violation (NOV), dated June 21, 2011, was issued to Gary.
- a. BOD₅ and TSS % removals were zero. Effluent concentrations of these parameters were somewhat higher than influent concentrations. The lack of BOD₅ and TSS removals is a violation of Appendix A. II. 1.
 - b. Influent BOD₅ and TSS were extremely diluted at 10 mg/l and 14 mg/l, respectively. The failure to properly operate and maintain the collection system to keep inflow and infiltration out is a violation of Appendix A. II. 1.
 - c. Influent BOD₅ loading indicates that a large portion of the sewage collected is lost before it ever reaches the wastewater treatment facility. The failure to properly operate and maintain the collection system to keep collected sewage contained in the system is a violation of Appendix A. II. 1.
 - d. The following reporting errors were noted on the January 2011 DMR. Inaccurate reporting is a violation of Appendix A. III. 2.
 - i. TSS % removal was reported to be 29.41%. While this is an accurate % difference, it is not a % removal. Because the effluent TSS was higher than the influent TSS, the TSS % removal was actually 0%.
 - ii. The minimum pH was reported as 7.0 S.U. The actual minimum was 7.3 S.U.
 - iii. Gary measured pH and TRC daily during January 2011, but only reported its measurement frequency as once per month. While all data was used in the reporting of results, Gary failed to report the increased monitoring frequency as required.
 - iv. The average monthly flow reported was slightly off due to a math error.
 - e. Gary did not remove sludge from its primary or secondary clarifier at normal frequencies due to the absence of a digester or holding tank. This is a violation of Appendix A. II. 1.
 - f. The grit rake was worn out and ineffective. This is a violation of Appendix A. II. 1.
 - g. The trickling filter was out of service. This is a violation of Appendix A. II. 1.
 - h. The facility was not operated by a Certified Class II Wastewater Operator. This is a violation of Section C.03.

4. WVDEP personnel reviewed DMRs submitted between July 2010 and June 2011 to determine facility compliance with the terms and conditions of its WV/NPDES permit (Refer to Attachment 1). The exceedances are as follows:
 - a. Six (6) minor exceedances
 - b. Four (4) moderate exceedances
 - c. Eighteen (18) major exceedances
5. On March 16, 2012, WVDEP personnel and representatives of Gary met to discuss the terms and conditions of this Order.
6. On May 1, 2012, June 22, 2012, October 25, 2012, and November 21, 2012, Gary submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Gary's ability to pay a civil administrative penalty.

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. Gary shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within twenty (20) days of entry of this Order, Gary shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Gary 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
Compliance Monitoring
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.

3. Because of Gary's permit violations, Gary shall be assessed a civil administrative penalty of three thousand six hundred thirty dollars (\$3,630) 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 \$302.50 due on or before March 1, 2013.

Payment 2 in the amount of \$302.50 due on or before April 1, 2013.

Payment 3 in the amount of \$302.50 due on or before May 1, 2013.

Payment 4 in the amount of \$302.50 due on or before June 1, 2013.

Payment 5 in the amount of \$302.50 due on or before July 1, 2013.

Payment 6 in the amount of \$302.50 due on or before August 1, 2013.

Payment 7 in the amount of \$302.50 due on or before September 1, 2013.

Payment 8 in the amount of \$302.50 due on or before October 1, 2013.

Payment 9 in the amount of \$302.50 due on or before November 1, 2013.

Payment 10 in the amount of \$302.50 due on or before December 1, 2013.

Payment 11 in the amount of \$302.50 due on or before January 1, 2014.

Payment 12 in the amount of \$302.50 due on or before February 1, 2014.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

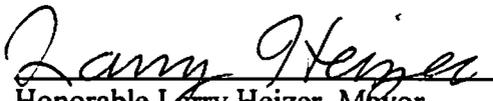
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

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


Honorable Larry Heizer, Mayor
City of Gary

1-8-13
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

RECEIVED

JAN 09 2013

ENVIRONMENTAL
ENFORCEMENT

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

Date

ATTACHMENT A
City of Gary

Outlet 001 DMR Exceedances - AVG. MONTHLY - July/2010 through June/2011						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
11/10	BOD5	mg/l	30	35	17%	X	-	-
02/11	BOD5	mg/l	30	32	7%	X	-	-
09/10	Fecal Coliform	cnts/100ml	200	4,808	2304%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - July/2010 through June/2011						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
09/10	Fecal Coliform	cnts/100ml	400	127,000	31650%	-	-	X
01/11	Fecal Coliform	cnts/100ml	400	580	45%	X	-	-

Outlet 001 Exceedances - Minimum 85% Removal - AVG. MONTHLY - July/2010 through June/2011						Degree of non-compliance		
Date	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
07/10	BOD	mg/l	85.0	26.0	69.4%	-	-	X
08/10	BOD	mg/l	85.0	28.9	66.0%	-	-	X
09/10	BOD	mg/l	85.0	66.2	22.1%	X	-	-
10/10	BOD	mg/l	85.0	29.0	65.9%	-	X	-
11/10	BOD	mg/l	85.0	0.0	100.0%	-	-	X
12/10	BOD	mg/l	85.0	60.1	29.3%	X	-	-
02/11	BOD	mg/l	85.0	0.0	100.0%	-	-	X
03/11	BOD	mg/l	85.0	0.0	100.0%	-	-	X
04/11	BOD	mg/l	85.0	0.0	100.0%	-	-	X
05/11	BOD	mg/l	85.0	0.0	100.0%	-	-	X
06/11	BOD	mg/l	85.0	0.0	100.0%	-	-	X
07/10	TSS	mg/l	85.0	50.0	41.2%	-	X	-
08/10	TSS	mg/l	85.0	0.0	100.0%	-	-	X
09/10	TSS	mg/l	85.0	0.0	100.0%	-	-	X
10/10	TSS	mg/l	85.0	50.0	41.2%	-	X	-
11/10	TSS	mg/l	85.0	23.5	72.4%	-	-	X
12/10	TSS	mg/l	85.0	66.7	21.5%	X	-	-
01/11	TSS	mg/l	85.0	0.0	100.0%	-	-	X
02/11	TSS	mg/l	85.0	42.0	50.6%	-	X	-
03/11	TSS	mg/l	85.0	0.0	100.0%	-	-	X
04/11	TSS	mg/l	85.0	0.0	100.0%	-	-	X
05/11	TSS	mg/l	85.0	25.0	70.6%	-	-	X
06/11	TSS	mg/l	85.0	0.0	100.0%	-	-	X

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	6	4	18

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

City of Gary

Receiving Stream:

Tug Fork

Treatment System Design Maximum Flow: 0.75 MGD

Treatment System Actual Average Flow: 0.318 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			2a / 3g	2b	2c	2d / 3h	2e	2f	2h	3a, 3b, 3c	3d	3f	4a	4c	
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1	
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	0	0	1	0	1	1	1	
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	0	0	1	0	1	1	1	
d)	Length of Time	1 to 3	2	1	1	2	1	1	1	1	1	1	1	1	
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	0	0	1	0	1	1	1	
Average Potential for Harm Factor			1.2	1	1	1.2	1	0.4	0.4	1	0.4	1	1	1	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	1	1	3	1	3	3	1	1	1	1	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.

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
2a / 3g	Moderate	Major	\$4,200	1	\$4,200
2b	Minor	Minor	\$1,000	1	\$1,000
2c	Minor	Minor	\$1,000	1	\$1,000
2d / 3h	Moderate	Major	\$4,200	1	\$4,200
2e	Minor	Minor	\$1,000	1	\$1,000
2f	Minor	Major	\$1,700	6	\$10,200
2h	Minor	Major	\$1,700	2	\$3,400
3a, 3b, 3c	Minor	Minor	\$1,000	1	\$1,000
3d	Minor	Minor	\$400	1	\$400
3f	Minor	Minor	\$1,000	1	\$1,000
4a	Minor	Minor	\$1,000	3	\$3,000
4c	Minor	Major	\$2,000	2	\$4,000
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$34,400

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		\$3,440
6.2.b.4 - Compliance/noncompliance history	10		\$3,440
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		10	(\$3,440)
6.2.b.5 - Ability to Pay		99.535	(\$34,240)
Penalty Adjustments			(\$30,770)
Penalty =			\$3,630

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:	