



west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: City of Richwood
4 White Ave
Richwood, WV 26261

DATE: August 2, 2012

ORDER NO.: 7485

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 Richwood (hereinafter "Richwood").

FINDINGS OF FACT

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

1. Richwood operates a wastewater collection system and a 0.5 million gallon per day wastewater treatment plant located in Richwood, Nicholas County, West Virginia. Richwood was issued WV/NPDES Water Pollution Control Permit No. WV0022004 on March 25, 2011.
2. On April 27, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted a Combined System Overflow (CSO) Inspection of Richwood's treatment facility and collection system. During the inspection, the following violations of the terms and conditions of Richwood's WV/NPDES Permit and Legislative Rules were observed and documented:
 - a. 47CSR2-3.2.- Richwood created conditions not allowable in Cherry River of the Gauley River, defined as trout waters in 47CSR2-6.3.b., at several locations

throughout the collection system by causing distinctly visible color, distinctly visible solids, and sludge banks on the bottom of the stream.

- b. Appendix A.II.1., Section C.22, and Section E.1 - Richwood failed to properly operate and maintain all facilities and systems of treatment which are installed or used by Richwood to achieve compliance with the conditions of its Permit.
- c. Section C. 22 and Section E. 1- Richwood allowed the discharge of raw sewage into waters of the State from the facility collection system at CSO Outlet 002, former CSO Outlet 005 and other locations throughout the collection system.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W-11-34-110427-2-JKL was issued to Richwood.

3. On June 6, 2011, WVDEP personnel investigated a citizen's complaint. During the investigation, the following violations of the terms and conditions of Richwood's WV/NPDES Permit were observed and documented:
 - a. Section C.22. - Richwood allowed a prohibited discharge from a sewage conveyance system to enter waters of the State.
 - b. Appendix A. Section IV.2. - Richwood failed to immediately report an unpermitted discharge which may have endangered health or the environment.

As a result of the aforementioned violations, NOV No. W-11-34-0629n7-GCM was issued to Richwood.

4. On September 22, 2011, WVDEP personnel conducted a review of the facility's discharge monitoring reports from April 30, 2010 to July 31, 2011. During this review, the following violations of the terms and conditions of Richwood's WV/NPDES permit were observed:
 - a. Section A.001.- Seven (7) exceedances of Richwood's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-Six (6)
 - ii. Moderate violations-One (1)
5. On September 26, 2011, WVDEP personnel conducted a review of Richwood's reported bypasses to the WV Spill line from July 14, 2009 to September 8, 2011. During this review, the following violations of the terms and conditions of Richwood's WV/NPDES Permit were observed:
 - a. Section C.22. – Two (2) prohibited discharges from points along the collection system were reported.
 - b. Section E.01. – Three (3) prohibited dry weather overflows were reported from the CSO points.

6. On January 30, 2012, WVDEP and Richwood personnel met to discuss the terms of this Order. Subsequent to the meeting, Richwood provided financial information which was used to determine its 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. Richwood shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, Richwood shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Richwood will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NE Regional Environmental Enforcement Office
254 Industrial Drive
Oak Hill, WV 25901**

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 Richwood's Legislative Rule and Permit violations, Richwood shall be assessed a civil administrative penalty of six thousand thirty dollars (\$6,030) 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 be mailed to:**

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

OTHER PROVISIONS

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

Robert C. Johnson
City of Richwood

August 7, 2012
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised September 2011

RECEIVED

AUG 13 2012

ENVIRONMENTAL
ENFORCEMENT

**Table One:
City of Richwood Exceedance Summary**

Outlet 001 Exceedances - AVG. MONTHLY - April 2010 through July 2011						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
9/10	Fecal Coliform	Cnts/100m	200	290	45%	-	X	-
4/11	Fecal Coliform	Cnts/100m	200	240	20%	X	-	-

Outlet 001 Exceedances - Minimum 85% Removal - AVG. MONTHLY -April 2010 through July 2011						Degree of non-compliance		
Date	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
9/10	BOD%Removal	%	85.0	82.8	2.6%	X	-	-
10/10	BOD%Removal	%	85.0	84.3	0.8%	X	-	-
6/10	TSS%Removal	%	85.0	82.5	2.9%	X	-	-
9/10	TSS%Removal	%	85.0	71.8	15.5%	X	-	-
10/10	TSS%Removal	%	85.0	73.9	13.1%	X	-	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	6	1	0

City of Richwood STP, WV0022004-April 27, 2011

Dry weather discharge observed occurring during this inspection at Outlet 002 due to pump station equipment malfunction.



Dry weather discharge observed occurring during this inspection at a manhole.



Dry weather discharge observed occurring during this inspection at a manhole.



Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

City of Richwood

Receiving Stream:

Cherry River of Gauley River

Treatment System Design Maximum Flow: 0.5 MGD

Treatment System Actual Average Flow: MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			2a	2b	2c	3a	3b	4.a.i	4.a.ii	5a	5b				
a)	Amount of Pollutant Released	1 to 3	1	1	1	2	1	1	1	1	1				
b)	Toxicity of Pollutant	0 to 3	2	1	2	2	0	1	1	2	2				
c)	Sensitivity of the Environment	0 to 3	3	1	3	3	0	3	3	3	3				
d)	Length of Time	1 to 3	2	2	1	2	1	1	1	1	1				
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	0	1	1	1	1				
Average Potential for Harm Factor			1.8	1.2	1.6	2	0.4	1.4	1.4	1.6	1.6	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	2	3	1	3	1	2	3	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	Moderate	Major	\$4,800	1	\$4,800
2b	Moderate	Moderate	\$3,200	1	\$3,200
2c	Moderate	Major	\$4,600	1	\$4,600
3a	Moderate	Minor	\$3,000	1	\$3,000
3b	Minor	Major	\$1,700	1	\$1,700
4.a.i	Moderate	Minor	\$2,400	6	\$14,400
4a.ii	Moderate	Moderate	\$3,400	1	\$3,400
5a	Moderate	Major	\$4,600	2	\$9,200
5b	Moderate	Major	\$4,600	3	\$13,800
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
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$58,100

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 -	20		\$11,620
6.2.b.4 - Compliance/noncompliance history	20		\$11,620
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)		\$17,821	(\$17,821)
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		99	(\$57,519)
Penalty Adjustments			(\$52,070)
Penalty =			\$6,030

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:	