



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
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Joe Manchin III, 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 Matt Quattro, Mayor
City of Thomas
PO Box 248
Thomas, WV 26292

DATE: June 22, 2012

ORDER NO.: 7064

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 Thomas (hereinafter "Thomas").

FINDINGS OF FACT

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

1. Thomas operates a wastewater treatment plant (WWTP) located in Thomas, Tucker County, West Virginia. Thomas was issued WV/NPDES Water Pollution Control Permit No. WV0024856 on September 29, 1997 with a re-issuance date of June 5, 2006. The WWTP includes two (2) fifty foot diameter SWD aeration tanks and a 444,000 gallon pond which is divided into two cells. The permit includes a schedule of compliance with a deadline of December 5, 2006 for the removal of sludge from the lagoon.
2. On December 10, 2004, a Notice of Violation (NOV) was issued by the West Virginia Department of Environmental Protection (WVDEP). NOV #SF-04-47-009-2141 was issued to Thomas for violations of its WV/NPDES permit, as follows:
 - a) Failure to submit required reports.
 - b) Discharge Monitoring Report (DMR) excursions.
 - c) Maintenance issues such as duckweed on the pond, uncleaned barscreen, empty de-chlorination tank and excess foam (attributed to the acceptance of Tucker County Landfill leachate).

3. On October, 3-4, 2006, WVDEP personnel performed a Compliance Sampling Inspection (CSI) at Thomas's WWTP and observed and documented the following deficiencies:
 - a) DMR violations.
 - b) Large accumulation of sludge in the pond.A NOV dated November 15, 2006 was issued.
4. March 19, 2007, WVDEP Division of Water and Waste Management/Permits granted a deadline extension to June 6, 2007 for the removal of sludge in the pond via Modification No. 1. The WVDEP approved plan was for the sludge to be removed to silt bags in roll-off containers with the sludge to be hauled to the Tucker County Landfill with approval from the landfill.
5. On July 16, 2007, a letter was sent from Thomas to WVDEP describing a new plan for the removal of the sludge, which consisted of pumping it out of the pond into the Tucker County Landfill leachate tanker truck and then land applying it.
6. On October 17, 2007, Thomas sent a land application proposal for the disposal of sludge on property adjacent to the Tucker County Landfill to WVDEP.
7. On March 17, 2008, WVDEP personnel performed inspections of the wastewater treatment plant and the proposed land application site. Violations of its WV/NPDES permit identified at the wastewater treatment plant included:
 - a) Failure to perform annual flow meter calibration (Appendix A, Section II-1) (NOV#: WR-08-47-13-202).
 - b) Records violations, specifically missing records (Appendix A, Section II-6) (NOV#: WR-08-47-14-202).
 - c) DMR excursions (Section A.001).
 - d) Failure to remove sludge from the pond per compliance schedule (Section B – Modification No. 1 – by June 5, 2007).

The land application site was deemed unacceptable due to:

- e) No vegetative cover/bare mineral soil.
 - f) Proximity to surface water.
 - g) Inadequate size.
 - h) Inability to secure site against public use.
8. On September 15, 2009, WVDEP personnel performed an inspection of Thomas' WWTP and observed and documented the following violations:
 - a) A unreported bypass occurring as a dry weather non-permitted combined sewer overflow (CSO) discharge, a violation of Legislative Rule, Title 47, Series 10, Section 5.12.e.(47CSR10-5.12.e.). (NOV#WR-09-47-30-202). It is estimated that this dry weather discharge continued for approximately 5 hours and that it was caused by the inadequate maintenance of the barscreen that was full and overflowing.
 - b) Conditions not allowable in waters of the state, which extended downstream for greater than 600 feet, a violation of 47CSR3-2 (NOV#WR-09-47-29-202).
 - c) Failure to report a spill, a violation of its WV/NPDES permit (Appendix A, Section IV-1) (NOV#WR-09-47-31-202).

- d) Flowmeter overdue for calibration, a violation of its WV/NPDES permit (Appendix A, Section II-1) (NOV#WR-09-47-28-202).
 - e) The barscreen was not maintained; floating sludge in chlorine contact chamber; and other operation and maintenance issues, all violations of its WV/NPDES permit (Appendix A, Section II-1).
 - f) Unapproved chemical treatment of pond, a violation of its WV/NPDES permit (Appendix A, Section II-1) (NOV#WR-47-27-202). Thomas was informed by correspondence dated August 24, 2009 to seek a permit modification prior to changing its treatment scheme.
9. As of January 20, 2010, a new plan of action for the removal of sludge from the lagoon has yet to be received by the WVDEP.
10. On January 21, 2010 WVDEP personnel reviewed Discharge Monitoring Reports (DMRs) submitted for Thomas between January 2009 and March 2010 to determine compliance with terms and conditions of its WV/NPDES permit. This review revealed numerous exceedances (Refer to Attachment A). The excursions can be further described as follows:
- a) Thirteen (13) minor violations.
 - b) Thirteen (13) moderate violations.
 - c) Two (2) major violations.
11. During the DMR review, it was determined that Thomas also failed to achieve 85% removal of BOD⁵ and total suspended solids, as required by its permit on the following months:

Date	Parameter	Reported % Removal
January 2009*	BOD ⁵	42%
January 2010*	BOD ⁵	.062%
March 2010*	BOD ⁵	81%
January 2009	TSS	76%
February 2009	TSS	81%
March 2009	TSS	82%
April 2009*	TSS	73%
July 2009	TSS	78%
January 2010*	TSS	.228%
March 2010*	TSS	61%

* These six (6) instances where Thomas failed to meet the 85% removal requirement correlate with a concentration or loading violation of a permitted parameter during the same month.

12. On August 25, 2010, Thomas representatives met with WVDEP personnel to discuss the draft Order. Thomas presented information and/or documentation regarding its efforts to properly operate and maintain the WWTP and requested that the agency evaluate its ability to pay a civil administrative penalty.
13. On September 9, 2010 and May 21, 2012, Thomas submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Thomas' 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. The City of Thomas shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of entry of this Order, the City of Thomas shall submit for approval a proposed corrective action plan and schedule, outlining action items and completion dates for how and when the City of Thomas will achieve compliance with all terms and conditions of its WV/NPDES permit and/or pertinent laws and rules. The corrective action plan shall be submitted to:

**Environmental Inspector Supervisor
NE Regional Environmental Enforcement Office
HC63 Box 2545
Romney, WV 26757**

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 corrective action plan and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable corrective action plan and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of the City of Thomas' Legislative Rule and permit violations, the City of Thomas shall be assessed a civil administrative penalty of five thousand four hundred fifty-five dollars (\$5,455) 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. The City of Thomas 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, the City of Thomas 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, the City of Thomas 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 the Thomas 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, the City of Thomas 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 the City of Thomas 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 the City of Thomas 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 the City of Thomas (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 the City of Thomas 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 the City of Thomas 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 the city of Thomas, its successors and assigns.

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

Matt Quattro
Matt Quattro, Mayor
City of Thomas

8/24/12
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

revised April 2009

RECEIVED

AUG 27 2012

ENVIRONMENTAL
ENFORCEMENT

Attachment A:
Thomas DMR Exceedances

Outlet 001 DMR Exceedances - AVG. MONTHLY - 1/1/2009 through 3/31/2010						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
01/09	BOD ⁵	mg/l	30.0	31	3%	X	-	-
01/10	BOD ⁵	lbs/day	37.5	64.9	73%	-	X	-
03/10	BOD ⁵	lbs/day	37.5	41.8	11%	X	-	-
04/09	TSS	mg/l	30.0	57	90%	-	X	-
01/10	TSS	lbs/day	37.5	109.6	192%	-	X	-
03/10	TSS	lbs/day	37.5	49.6	32%	X	-	-
03/10	TSS	mg/l	30.0	32	7%	X	-	-
11/09	TKN	lbs/day	22.50	27	20%	X	-	-
03/09	TKN	mg/l	18.00	31	72%	-	X	-
04/09	TKN	mg/l	18.00	28	56%	-	X	-
07/09	TKN	mg/l	18.00	33	83%	-	X	-
10/09	TKN	mg/l	18.00	21	17%	X	-	-
11/10	TKN	mg/l	18.00	26	44%	-	X	-
04/09	Iron	mg/l	1.23	2.21	80%	-	X	-
04/09	Zinc	mg/l	0.0273	0.067	145%	-	X	-
04/09	Aluminum	mg/l	0.374	0.47	26%	X	-	-
04/09	Lead	mg/l	0.00054	0.0041	659%	-	-	X
12/09	Lead	mg/l	0.00054	0.0008	48%	-	X	-
01/10	Lead	mg/l	0.00054	0.0016	196%	-	X	-
01/09	Copper	mg/l	0.00291	0.004	37%	X	-	-
04/09	Copper	mg/l	0.00291	0.0116	299%	-	X	-
01/10	Copper	mg/l	0.00291	0.0119	309%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - 1/1/2009 through 3/31/2010						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
01/10	TSS	lbs/day	75.00	109.6	46%	X	-	-
04/09	Iron	mg/l	2.19	2.21	1%	X	-	-
04/09	Zinc	mg/l	0.0538	0.067	25%	X	-	-
04/09	Lead	mg/l	0.00169	0.0041	143%	-	X	-
04/09	Copper	mg/l	0.00748	0.0116	55%	X	-	-
01/10	Copper	mg/l	0.00748	0.0119	59%	X	-	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	13	13	2

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

City of Thomas

Receiving Stream:

Blackwater River

Treatment System Design Maximum Flow: 0.15 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#												
			7.a	7.b	7.d	8.a	8.b	8.c	8.d	8.e	8.f	10.a	10.b	10.c	11
a)	Amount of Pollutant Released	1 to 3	1	1	1	3	3	1	1	1	1	1	1	2	1
b)	Toxicity of Pollutant	0 to 3	1	0	1	1	1	0	1	1	1	1	1	1	1
c)	Sensitivity of the Environment	0 to 3	1	0	1	1	1	0	1	1	1	1	1	1	1
d)	Length of Time	1 to 3	1	1	2	1	1	1	3	1	1	1	1	1	1
e)	Actual Exposure and Effects thereon	0 to 3	1	0	1	3	3	0	1	1	1	1	1	1	1
Average Potential for Harm Factor			1	0.4	1.2	1.8	1.8	0.4	1.4	1	1	1	1	1.2	1
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	3	3	3	3	3	3	3	1	2	3	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 $\leq 40\%$ for Avg. Monthly or $\leq 100\%$ for Daily Max., exceed numeric WQ standard by $\leq 100\%$, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by $\geq 41\%$ and $\leq 300\%$ for Avg. Monthly, $\geq 101\%$ and $\leq 600\%$ for Daily Max., exceed numeric WQ standard by $\geq 101\%$ and $\leq 600\%$ or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by $\geq 301\%$ for Avg. Monthly, $\geq 601\%$ for Daily Max., exceed numeric WQ standard by $\geq 601\%$, 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
7.a	Minor	Major	\$2,000	1	\$2,000
7.b	Minor	Major	\$1,700	1	\$1,700
7.d	Moderate	Major	\$4,200	1	\$4,200
8.a	Moderate	Major	\$4,800	1	\$4,800
8.b	Moderate	Major	\$4,800	1	\$4,800
8.c	Minor	Major	\$1,700	1	\$1,700
8.d	Moderate	Major	\$4,400	1	\$4,400
8.e	Minor	Major	\$2,000	1	\$2,000
8.f	Minor	Major	\$2,000	1	\$2,000
10.a	Minor	Minor	\$1,000	13	\$13,000
10.b	Minor	Moderate	\$1,500	13	\$19,500
10.c	Moderate	Major	\$4,200	2	\$8,400
11	Minor	Moderate	\$1,500	6	\$9,000
0	FALSE	FALSE	FALSE		\$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					\$77,500

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 -	5		\$3,875
6.2.b.4 - Compliance/noncompliance history	15		\$11,625
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	(\$7,750)
6.2.b.3 - Cooperation with the Secretary		10	(\$7,750)
6.2.b.5 - Ability to Pay		93	(\$72,075)
Penalty Adjustments			(\$72,045)
Penalty =			\$5,455

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:	