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west virginia department of environmental protection

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Division of Water and Waste Management  
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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 Follansbee  
John DeStefano, City Manager  
PO Box 606  
Follansbee, WV 26037

DATE: October 14, 2014  
ORDER NO.: 7966

**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 Follansbee (hereinafter "Follansbee").

**FINDINGS OF FACT**

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

1. Follansbee operates a waste water treatment plant located in Follansbee, Brooke County, West Virginia. Follansbee was reissued WV/NPDES Water Pollution Control Permit No. WV0020273 on May 26, 2006 and June 24, 2011.
2. On November 10, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel conducted a complaint investigation on Allegheny Street in Follansbee. During the investigation, violations of the following sections of WV Legislative Rules were observed and documented:
  - a. 47CSR11 Section 2.2.a-Follansbee failed to immediately report a spill that occurred at a manhole along Allegheny Street. The extent, accumulation, and volume of sludge and debris suggested that the discharge may have occurred for several days. The complainant stated that they notified Follansbee of the spill on November 8, 2010.

Promoting a healthy environment.

- b. 47CSR2 Section 3.2.a-Follansbee created conditions not allowable in waters of the State. Specifically, raw sewage was discharging from a manhole along Allegheny Street, causing distinctly visible floating solids in the receiving stream.
- c. 47CSR11 Section 2.5-Follansbee failed to immediately take any and all measures necessary to contain the spill or discharge. Follansbee personnel investigated the complaint and discovered the spill at 1630 hours on November 9, 2010, but waited until the following day to remove the blockage.

As a result of the aforementioned violations, Notice of Violations (NOVs) Nos. NW-JME-111010-001, NW-JME-111010-002, and NW-JME-111010-003 were issued to Follansbee.

3. On May 5, 2011, WVDEP personnel conducted a compliance sampling inspection (CSI) of the facility. During the inspection, a violation of the following section of the terms and conditions of Follansbee's WV/NPDES permit was observed and documented:
  - a. Appendix A.III.6.-Follansbee's facility records were incomplete. Daily operational records, equipment maintenance records, and schedules for the oxidation ditch blowers, mixers, emergency backup generators, and other components of the wastewater treatment plant were not kept.

As a result of the aforementioned violations, NOV No. CM-TJA-050511-001 was issued to Follansbee.

4. On June 24, 2011, WVDEP personnel issued Unilateral Order No. 7236 to Follansbee for the following:
  - a. Follansbee failed to submit samples and results from Outlet 001 for the pollutants listed in Appendix J, Tables 1A, 1, and 2 of 40CFR122 as part of its WV/NPDES permit application, as required by 40CFR122.21 (j).
  - b. On April 18, 2011, Follansbee submitted one (1) set of sampling results from Outlet 001 for the pollutants listed in Appendix J, Tables 1A, 1, and 2 of 40CFR122.
  - c. Data from Outlets 007 and 008 frequently exceeded water quality criteria for fecal coliform. Effluent limitations were imposed in the permit. The permittee cannot meet the prescribed effluent limitations for fecal coliform on a consistent basis.
5. On August 3, 2011, Follansbee filed Appeal No. 11-24-EQB with the West Virginia Environmental Quality Board (EQB). In the Appeal, Follansbee represented that the June 24, 2011 reissuance of its WV/NPDES permit was improper. Specifically, Follansbee sought recalculation of its effluent limitations.
6. On October 7, 2011, WVDEP personnel conducted a Compliance Evaluation Inspection (CEI) of the facility. During the inspection the following comments and deficiencies were noted:
  - a. Outfall 001 was overgrown with weeds and was inaccessible.
  - b. The July 2011 Discharge Monitoring Report (DMR) exceeded ammonia nitrogen limits.

- c. Sweetwater Resources' mobile water treatment plant was set up at the facility for demonstration purposes. The treatment unit processed Marcellus gas flow back water and produced fluids. The solids, organic material and metals were removed from the water, and clean water was taken back to the drilling operation. Documentation, including the date, quantity, and facility where the water was taken, was submitted by Sweetwater Resources. Mike Havelka, a representative of Sweetwater Resources, represented that nothing was discharged into Follansbee's wastewater treatment plant.
7. On November 8, 2011, certified correspondence was sent to Follansbee as a result of WVDEP's inspection conducted on October 7, 2011. Within ten (10) days of receipt of the correspondence, Follansbee was required to provide a written response to sixteen (16) questions regarding the Sweetwater Resources operation at the Follansbee Publicly Owned Treatment Works (POTW). To date, correspondence from Follansbee has not been received.
8. On June 26, 2012, Follansbee filed a Motion to Withdraw Appeal No. 11-24-EQB pursuant to a Settlement Agreement.
9. On July 2, 2012, the EQB granted Follansbee's Motion to Withdraw the aforementioned Appeal. As part of the terms and conditions of the resulting Settlement Agreement, WVDEP agreed to recalculate all effluent limitations that are based on human health criteria using a default mixing zone, in accordance with WV Legislative Rule 47CSR2 Section 7.2.a.2. In turn, Follansbee agreed to submit to WVDEP an application for WV/NPDES permit modification requesting the effluent limit recalculations, at which time WVDEP would process the application and issue the WV/NPDES permit modification. Upon review, WVDEP personnel determined that the required WV/NPDES permit modification was never submitted by Follansbee; therefore, the recalculations were not performed, and the effluent limitations included in the June 24, 2011 WV/NPDES permit reissuance remain in effect.
10. On July 5, 2012, WVDEP personnel conducted a River Monitoring Evaluation (RME) and collected effluent samples from Outfall 001. During the inspection, a violation of the following section of the terms and conditions of Follansbee's WV/NPDES permit was observed and documented:
  - a. Section A.001-An effluent sample collected at Outfall 001 revealed a fecal coliform result of 440 counts per 100mL. This exceeds the Daily Maximum WV/NPDES permit limit of 400 Counts per 100 mL.

As a result of the aforementioned violation, NOV No. CM-TJA-070512-001 was issued to Follansbee.

11. On April 9, 2013, WVDEP personnel investigated a spill at Follansbee's Randall lift Station. During the spill investigation, a violation of the following section of WV Legislative Rules was observed and documented:
  - a. 47CSR2 Sections 3.2 a, b, and c-Follansbee created conditions not allowable in waters of the State. Specifically, raw sewage was discharging from the Randall

lift station, causing distinctly visible floating, suspended, or settleable solids, sludge banks and odors in the receiving stream. Subsequent to the investigation, Follansbee reported the spill (HSEM Reference 05-233095).

12. On April 12, 2013, WVDEP personnel conducted an inspection of Follansbee's Randall lift station. During the inspection, violations of the following sections of WV Legislative Rules and Follansbee's WV/NPDES permit were observed and documented:
- a. Appendix A.1.3-Follansbee failed to take all reasonable steps to minimize or prevent any discharge in violation of its permit, which had reasonable likelihood of adversely affect human health or the environment.
  - b. Appendix A.IV.1-Follansbee failed to take any and all measures necessary to contain the spill at the Randall lift station.
  - c. 47CSR2 Sections 3.2 a, b, and c-Follansbee created conditions not allowable in waters of the State. Specifically, raw sewage was discharging from the Randall lift station, causing distinctly visible floating, suspended, or settleable solids, sludge banks and odors in the receiving stream.

As a result of the aforementioned violations, NOV Nos. NW-GCP-041213-001, NW-GCP-041213-002, and NW-GCP-041213-003 were issued to Follansbee.

13. On April 15, 2013, WVDEP personnel conducted an inspection of Follansbee's Randall lift station. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:
- a. 47CSR2 Sections 3.2 a, b, and c-Follansbee created conditions not allowable in waters of the State. Specifically, raw sewage was discharging from the Randall lift station, causing distinctly visible floating, suspended, or settleable solids, sludge banks and odors in the receiving stream.
14. On April 16, 2013, WVDEP personnel conducted an inspection of Follansbee's Randall lift station. During the inspection, violations of the following sections of WV Legislative Rules and Follansbee's WV/NPDES permit were observed and documented:
- a. Section F-Follansbee failed to properly operate and maintain the Randall lift station. Specifically, the float controls were not properly adjusted, and allowed wastewater to clog the influent line from the manhole adjacent to the lift station. Flow from the manhole was unable to discharge into the lift station, thus causing the manhole to surcharge and spill raw sewage into an un-named tributary of the Ohio River for several days.
  - b. 47CSR2 Sections 3.2 a, b, and c-Follansbee caused conditions not allowable in waters of the State. Specifically, raw sewage was discharging from the Randall lift station, causing distinctly visible floating or settleable solids, deposits or sludge banks on the bottom of the stream, and odors in the vicinity of the waters of the State.

As a result of the aforementioned violations, NOV Nos. W-NW-GCP-041613-001 and W-NW-GCP-041613-002 were issued to Follansbee.

15. On May 14, 2013 through May 16, 2013, WVDEP personnel conducted a CSI of the facility. During the inspection, violations of the following sections of WV State Code, Legislative Rule, and Follansbee's WV/NPDES permit were observed and documented:
- a. Section C.12-The permittee failed to monitor certain pollutants using the most sensitive methods and detection levels available. For Hexavalent Chromium, the permit recommends EPA method 218.6. The permittee had this parameter analyzed with Standard Method (SM) 3500 CrD, which is not as sensitive as the recommended method.
  - b. Section C.16-Non-detect values for Total Suspended Solids (TSS) and ammonia nitrogen sample results were not properly calculated.
  - c. Appendix A.III.d-The permittee analyzed Biochemical Oxygen Demand (BOD5), TSS, and pH more frequently than required, but did not indicate the increased measurement frequency on the DMR.
  - d. Section C.15.a-The BOD5 and TSS percent removal calculations were factored by averaging the percent removal of each day samples were collected, and not by the thirty (30) day average influent and effluent concentrations.
  - e. Appendix A.III.2.c-An ammonia nitrogen sample, collected January 4, 2013, exceeded maximum daily permit limits of Section A.001, but was not indicated on the number of exceedances column of the DMR.
  - f. Appendix A.III.6-Calibration and maintenance records for the pH meter and flow meters used for WV/NPDES reporting were not kept.
  - g. Appendix A.II.1-The permittee's flow meters used for WV/NPDES reporting were not calibrated within an appropriate time frame.
  - h. 47CSR10 Section 4.4.b.7-The permittee analyzes pH and Total Residual Chlorine (TRC) in house for WV/NPDES reporting. All Buffer solutions used to calibrate the pH meter, and DPD reagents used to analyze TRC were expired.
  - i. Section B.1.-The permittee failed to submit a Plan of Action, on or before February 1, 2012, which outlined measures the permittee would have taken to achieve final effluent limitations for ammonia, cadmium, nitrate, and phenolic at outlet 001.
  - j. Section B.1.-The permittee failed to submit Quarterly Progress Reports of the above mentioned Plan of Action.
  - k. Section C.26-The permittee failed to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) for the site within ninety (90) days from the issuance date of the permit.
  - l. Section C.27.c-The permittee failed to revise and implement changes to its SWPPP after the occurrence of benchmark exceedances at Stormwater Outfalls 007 and 008.
  - m. Appendix A.III.6-The permittee's daily operational records and equipment maintenance records/schedules for components of the wastewater treatment plant were not kept up to date, with the last entry noted in July 2012. Collection system daily log sheets were also not maintained.
  - n. Appendix A.II.1-The manhole next to the Randall Street lift station was discharging untreated sewage to waters of the State, and a force main in the North lift station was in need of repair, causing one of the pumps to be shut off.
  - o. 47CSR2 Sections 3.2 a, b, and c-Follansbee created conditions not allowable, by discharging untreated sewage from the Randall Street lift station into waters of the State.

- p. 22-11-8.b.1-Follansbee allowed sewage to discharge from an unpermitted outlet, the Randall Street lift station, into waters of the State.
- q. Appendix A.II.1-The permittee failed to properly operate and maintain equipment by allowing excessive vegetation to grow on the east boat clarifier.

As a result of the aforementioned violations, NOV No. CM-051613-002 was issued to Follansbee.

16. On July 9, 2013, WVDEP personnel conducted an inspection of Follansbee's Randall lift station. During the inspection, violations of the following sections of WV Legislative Rules and Follansbee's WV/NPDES permit were observed and documented:

- a. Appendix A.1.3-Follansbee failed to take all reasonable steps to minimize or prevent any discharge in violation of its permit, which has reasonable likelihood of adversely affecting human health or the environment.
- b. Appendix A.IV.1-Follansbee failed to take any and all measures necessary to contain the spill at the Randall lift station.
- c. 47CSR2 Sections 3.2 a, b, and c-Follansbee caused conditions not allowable in waters of the State. Specifically, raw sewage was discharging from the Randall lift station, causing distinctly visible floating or settleable solids, deposits or sludge banks on the bottom of the stream, and odors in the vicinity of the waters of the State.

As a result of the aforementioned violations, NOV Nos. NW-GCP-070913-001, NW-GCP-070913-002, and NW-GCP-070913-003 were issued to Follansbee.

17. On October 15, 2013, WVDEP personnel conducted an inspection of Follansbee's Randall lift station. During the inspection, violations of the following sections of WV Legislative Rules and Follansbee's WV/NPDES permit were observed and documented:

- a. Appendix A.1.3-Follansbee failed to take all reasonable steps to minimize or prevent any discharge in violation of its permit which had the likelihood of adversely affecting human health or the environment.
- b. Appendix A.IV.1-Follansbee failed to take any and all measures necessary to contain the spill at the Randall lift station.
- c. 47CSR2 Sections 3.2.a, b, and c-Follansbee caused conditions not allowable in waters of the State. Specifically, raw sewage was discharging from the Randall lift station, causing distinctly visible floating or settleable solids, deposits or sludge banks on the bottom of the stream, and odors in the vicinity of the waters of the State.

As a result of the aforementioned violations, NOV Nos. NW-GCP-101513-001 and NW-GCP-101513-002 were issued to Follansbee.

18. On December 3, 2013, Follansbee reported a spill at the Randall lift station (HSEM Reference 05-247916A).

19. On December 4, 2013, Follansbee reported a spill at the Brooke lift station, which occurred due to a power outage (HSEM Reference 05-247970A).

20. On January 30, 2014, WVDEP personnel and representatives of Follansbee met to discuss the terms and conditions of this Order.
21. On April 4, April 8, April 19, and September 29, 2014, Follansbee submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Follansbee's ability to pay a civil administrative penalty.
22. On July 30, 2014, WVDEP personnel and a representative of Follansbee met by telephone to discuss the terms and conditions of this Order.
23. On October 13, 2014, WVDEP personnel conducted a review of facility records from the time period of July 2011 through August 2014. During this review, the following violations of the terms and conditions of Follansbee's WV/NPDES permit were observed:
  - a. A.001, 007, and 008 - Thirty-six (36) exceedances of Follansbee's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
    - i. Minor violations-twenty-one (21)
    - ii. Moderate violations-nine (9)
    - iii. Major violations-six (6)

### **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. Follansbee 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 thirty (30) days of the effective date of this Order, Follansbee shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Follansbee will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall include, but not be limited to, a detailed third-party analysis that defines the root cause of the collection system errors. The analysis shall investigate all aspects of the collection system, including operational management, employee training, budget restraints, management restraints, facility and equipment limitations, facility procedures and protocols, employee training, and other accountability elements not specifically mentioned. 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 Follansbee's West Virginia Code, Legislative Rule and permit violations, Follansbee shall be assessed a civil administrative penalty of twenty thousand dollars (\$20,000) 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 \$4,000 due on or before December 1, 2014.

Payment 2 in the amount of \$4,000 due on or before March 1, 2015.

Payment 3 in the amount of \$4,000 due on or before June 1, 2015.

Payment 4 in the amount of \$4,000 due on or before September 1, 2015.

Payment 5 in the amount of \$4,000 due on or before December 1, 2015.

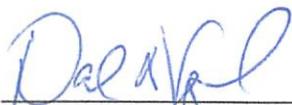
Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

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

### **OTHER PROVISIONS**

1. Follansbee 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, Follansbee 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, Follansbee 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 Follansbee 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, Follansbee 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 Follansbee 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 Follansbee 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 Follansbee (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 Follansbee 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 Follansbee 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 Follansbee, its successors and assigns.

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

  
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John DeStefano, City Manager  
City of Follansbee *Mayor*

10.23.2014  
\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

**RECEIVED**

NOV 12 2014

ENVIRONMENTAL  
ENFORCEMENT

Table One:  
DMR Exceedance Summary

WV0020273 Outlet 001 AVG MONTHLY DMR Exceedances July 2011 - August 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
6/30/2013	NH3-N	mg/l	1.0000	3.5000	250%	-	X	-
2/28/2014	NH3-N	mg/l	1.0000	1.3300	33%	X	-	-
2/28/2014	NH3-N	lbs/day	13.3400	22.7500	71%	-	X	-
4/30/2014	NH3-N	lbs/day	13.3400	13.4000	0.4%	X	-	-
7/31/2014	NH3-N	lbs/day	13.3400	50.0900	275%	-	X	-
7/31/2014	NH3-N	mg/l	1.0000	2.2000	120%	-	X	-
7/31/2013	NO3-N	mg/l	10.0000	11.1000	11%	X	-	-
8/31/2013	NO3-N	mg/l	10.0000	12.6000	26%	X	-	-
9/30/2013	NO3-N	mg/l	10.0000	10.7000	7%	X	-	-
7/31/2014	NO3-N	mg/l	10.0000	11.2000	12%	X	-	-
7/31/2013	HEX CR	mg/l	0.0226	0.4010	1674%	-	-	X
8/31/2013	Total Pheno	mg/l	0.0005	0.0006	20%	X	-	-
11/30/2011	Total Hg	mg/l	0.00871	0.0270	210%	-	X	-

WV0020273 Outlet 001 MAX DAILY DMR Exceedances July 2011 - August 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
1/31/2012	TSS	mg/l	60.0000	80.0000	33%	X	-	-
6/30/2013	TSS	mg/l	60.0000	72.0000	20%	X	-	-
7/31/2011	NH3-N	mg/l	3.1600	4.6000	46%	X	-	-
1/31/2012	NH3-N	mg/l	3.1600	3.2400	3%	X	-	-
7/31/2012	NH3-N	mg/l	3.1600	4.0900	29%	X	-	-
6/30/2013	NH3-N	mg/l	1.0000	7.6600	666%	-	-	X
2/28/2014	NH3-N	mg/l	1.0000	5.3300	433%	-	X	-
2/28/2014	NH3-N	lbs/day	13.3400	22.7500	71%	X	-	-
4/30/2014	NH3-N	mg/l	1.0000	2.2800	128%	-	X	-
4/30/2014	NH3-N	lbs/day	13.3400	13.4000	0.4%	X	-	-
7/31/2014	NH3-N	lbs/day	13.3400	50.0900	275%	-	X	-
7/31/2014	NH3-N	mg/l	1.0000	11.0000	1000%	-	-	X
7/31/2013	NO3-N	mg/l	10.0000	11.1000	11%	X	-	-
8/31/2013	NO3-N	mg/l	10.0000	12.6000	26%	X	-	-
9/30/2013	NO3-N	mg/l	10.0000	10.7000	7%	X	-	-
7/31/2014	NO3-N	mg/l	10.0000	11.2000	12%	X	-	-
7/31/2013	HEX CR	mg/l	0.0454	0.4010	783%	-	-	X
8/31/2013	Total Pheno	mg/l	0.0005	0.0006	20%	X	-	-
11/30/2011	Total Hg	mg/l	0.0120	0.0270	125%	-	X	-

WV0020273 Outlet 008 AVG MONTHLY DMR Exceedances July 2011 - August 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted avg monthly	Reported avg monthly	% Exceedance	Min	Mod	Maj
6/30/2013	FECAL	Cnts/100ml	200.00	5700.0000	2750%	-	-	X

Table One:  
DMR Exceedance Summary

WV0020273 Outlet 008 MAX DAILY DMR Exceedances July 2011 - August 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
6/30/2013	FECAL	Cnts/100ml	400.00	5700.0000	1325%	-	-	X

Outlet 001 Exceedances - Minimum 85% Removal - AVG. MONTHLY - July 2011 - August 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
10/31/2011	TSS % rem	%	85.00	83.8000	1.4%	X	-	-
1/31/2012	TSS % rem	%	85.00	77.0000	7%	X	-	-

WV0020273 Totals		Degree of non-compliance		
		Min	Mod	Maj
		21	9	6

## Alleghany Street Bypass 11-10-10



**City of Follansbee's Randall lift station 04-09-13**



**City of Follansbee's Randall lift station 4-12-13**



**City of Follansbee's Randall lift station 04-15-13**



**City of Follansbee's Randall lift station 04-16-13**



City of Follansbee's Randall lift station 05-15-13



**City of Follansbee's Randall lift station 06-03-13**



**City of Follansbee's Randall lift station 06-29-13**



**City of Follansbee's Randall lift station 07-09-13**



City of Follansbee (WV0020273) Randall lift station bypass



4-09-13 9:53 A.M. - Raw sewage entering waters of the State

4-09-13 12:04 P.M. - Raw sewage entering waters of the State



City of Follansbee (WV0020273) Randall lift station bypass



4-09-13 12:07 P.M. - Sludge blanket in waters of the State

4-12-13 9:55 A.M. - Erosion channel contents, approximately 3 feet before entering waters of the State



City of Follansbee (WV0020273) Randall lift station bypass



4-15-13 2:26 P.M. - Confluence point of the erosion channel (left side) and waters of the State (right side)

4-16-13 9:55 A.M. - Same area from about 8 feet back



# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:**

City of Follansbee

**Receiving Stream:**

UT of Cross Creek/Ohio River

**Treatment System Design Maximum Flow:**   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#													
			10a	11a, 12c, 13a, 14b, 15a, 16c, 17c	12a	12b	14a	15a	15b	15c	15d	15e	15f	15g	15h	
a)	Amount of Pollutant Released	1 to 3	1	2	2	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	0	0	0	0	0	0	0
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	0	0	0	0	0	0	0	0	0
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1	1	1
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	0	0	0	0	0	0	0	0	0
<b>Average Potential for Harm Factor</b>			1	1.2	1.2	1	1	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>														
	Degree of Non-Compliance	1 to 3	1	2	1	2	1	1	1	1	1	1	1	1	1	1

**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.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

1)	Potential for Harm Factor	Factor Range	FOF#													
			15i	15k	15m	15p	16a	16b	17a	17b	23ai	23aii	23aiii			
a)	Amount of Pollutant Released	1 to 3	1	1	1	2	2	1	2	1	1	1	1			
b)	Toxicity of Pollutant	0 to 3	0	0	0	1	1	1	1	1	1	1	1			
c)	Sensitivity of the Environment	0 to 3	0	0	0	1	1	1	1	1	1	1	1			
d)	Length of Time	1 to 3	1	1	1	1	2	2	3	3	1	1	1			
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0	1	1	1	1	1	1	1	1			
Average Potential for Harm Factor			0.4	0.4	0.4	1.2	1.4	1.2	1.6	1.4	1	1	1	No	No	
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	1	1	1	2	1	2	1	2	1	2	3			

		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
10a	Minor	Minor	\$1,000	1	\$1,000
11a, 12c, 13a, 14b, 15o, 16c, 17c	Moderate	Moderate	\$3,200	7	\$22,400
12a	Moderate	Minor	\$2,200	1	\$2,200
12b	Minor	Moderate	\$1,500	1	\$1,500
14a	Minor	Minor	\$1,000	1	\$1,000
15a	Minor	Minor	\$400	1	\$400
15b	Minor	Minor	\$400	1	\$400
15c	Minor	Minor	\$400	1	\$400
15d	Minor	Minor	\$400	1	\$400
15e	Minor	Minor	\$400	1	\$400
15f	Minor	Minor	\$400	1	\$400
15g	Minor	Minor	\$400	1	\$400
15h	Minor	Minor	\$400	1	\$400
15i	Minor	Minor	\$400	1	\$400
15k	Minor	Minor	\$400	1	\$400
15m	Minor	Minor	\$400	1	\$400
15p	Moderate	Moderate	\$3,200	1	\$3,200
16a	Moderate	Minor	\$2,400	1	\$2,400
16b	Moderate	Moderate	\$3,200	1	\$3,200
17a	Moderate	Minor	\$2,600	1	\$2,600
17b	Moderate	Moderate	\$3,400	1	\$3,400
23ai	Minor	Minor	\$1,000	12	\$12,000
23aii	Minor	Moderate	\$1,500	4	\$6,000
23aiii	Minor	Major	\$2,000	4	\$8,000
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
<b>Total Base Penalty</b>					<b>\$73,300</b>

## 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 -	15		\$10,995
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		10	(\$7,330)
6.2.b.5 - Ability to Pay		77.756	(\$56,995)
<b>Penalty Adjustments</b>			<b>(\$53,300)</b>
<b>Penalty =</b>			<b>\$20,000</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>	