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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  
Phone: (304) 926-0470  
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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: Hardy County Rural Development Authority  
Mallie J. Combs, Executive Director  
P.O. Box 209  
Moorefield, WV 26836

DATE: December 22, 2015

ORDER NO.: 8412

**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 Hardy County Rural Development Authority (hereinafter "HCRDA").

**FINDINGS OF FACT**

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

1. HCRDA operates a wastewater treatment plant located in Moorefield, Hardy County, West Virginia. HCRDA was reissued WV/NPDES Water Pollution Control Permit No. WV0105902 on September 26, 2012.
2. On April 17, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and HCRDA's WV/NPDES permit were observed and documented:
  - a. Section C.5-HCRDA failed to submit the following monthly discharge monitoring reports (DMRs) within twenty (20) days following the end of the reporting period: November 2013; June 2014; November 2014; January 2015; and February 2015.
  - b. Appendix A.IV and 47CSR11 Section 2.2.a-HCRDA failed to provide immediate notification to the Office of Water Resources' Emergency Notification Number of a treatment bypass and the resulting discharge of pollutants into waters of the State.

- c. Appendix A.II.3 and 47CSR10 Section 5.13-HCRDA allowed a bypass of treatment. Specifically, the northernmost clogged sand filter was overflowing, and treatment was being bypassed.
- d. 47CSR2 Section 3.2.b.-HCRDA caused conditions not allowable by creating sludge banks in waters of the State.
- e. Appendix A.II.1-HCRDA failed to properly operate and maintain all systems of treatment. Specifically, the bar screen was full and overflowing, the clarifiers had floating solids, the sand filters were clogged, and there was trash placed on the concrete pad. Chlorination tablets were badly wicked and placed well above the waterline; therefore, no chlorination was occurring. Dechlorination tablets were also wicked with a minute amount at or below the waterline.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. WR-015-016-018-216; WR-015-016-019-216; WR-015-016-020-216; WR-015-016-021-216; WR-015-016-022-216; and WR-015-016-023-216 were issued to HCRDA.

3. On August 25, 2015, WVDEP personnel and representatives of HCRDA met to discuss the terms and conditions of this Order. During the meeting, representatives of HCRDA stated that all missing DMRs had been submitted since the issuance of the aforementioned NOVs.
4. On August 27, 2015, WVDEP personnel conducted a review of facility records from the time period of May 1, 2013 through June 30, 2015. During this review, the following violations of the terms and conditions of HCRDA's WV/NPDES permit were observed:
  - a. Section A – Thirty-seven (37) exceedances of HCRDA's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
    - i. Minor violations-thirteen (13)
    - ii. Moderate violations-seventeen (17)
    - iii. Major violations-seven (7)
5. On September 24 and October 22, 2015, HCRDA submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated HCRDA'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. HCRDA 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, HCRDA shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when HCRDA will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0105902 and Order No. 8412.

The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
NE Regional Environmental Enforcement Office  
22288 Northwestern Pike  
Romney, WV 26757-8005**

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 HCRDA's permit violations, HCRDA shall be assessed a civil administrative penalty of fifteen thousand dollars (\$15,000) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following payment schedule:

Payment 1 in the amount of \$1250.00 due on or before March 1, 2016.

Payment 2 in the amount of \$1250.00 due on or before April 1, 2016.

Payment 3 in the amount of \$1250.00 due on or before May 1, 2016.

Payment 4 in the amount of \$1250.00 due on or before June 1, 2016.

Payment 5 in the amount of \$1250.00 due on or before July 1, 2016.

Payment 6 in the amount of \$1250.00 due on or before August 1, 2016.

Payment 7 in the amount of \$1250.00 due on or before September 1, 2016.

Payment 8 in the amount of \$1250.00 due on or before October 1, 2016.

Payment 9 in the amount of \$1250.00 due on or before November 1, 2016

Payment 10 in the amount of \$1250.00 due on or before December 1, 2016.

Payment 11 in the amount of \$1250.00 due on or before January 1, 2017.

Payment 12 in the amount of \$1250.00 due on or before February 1, 2017.

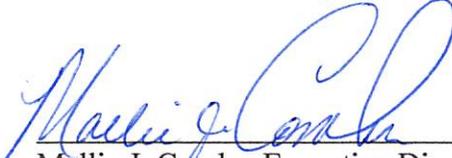
Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payments shall include a reference to Order No. 8412 and shall be mailed to:**

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

### **OTHER PROVISIONS**

1. HCRDA 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, HCRDA 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, HCRDA 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 HCRDA 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, HCRDA 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 HCRDA becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and HCRDA 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 HCRDA 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 HCRDA (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 HCRDA 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 HCRDA 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 HCRDA, its successors and assigns.

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

  
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Mallie J. Combs, Executive Director  
Hardy County Rural Development Authority

1-05-2016  
\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

*revised March 2013*

**RECEIVED**

JAN 07 2016

**ENVIRONMENTAL  
ENFORCEMENT**

Table One: HCRDA DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - May/2013 through June/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
05/31/2013	BOD5	mg/l	5	8.2	64%	-	X	-
05/31/2013	Fecal Coliform	cts/100ml	200	365	83%	-	X	-
06/30/2013	Ammonia Nitrogen	mg/l	3	17	467%	-	-	X
07/31/2013	BOD5	mg/l	5	5.2	4%	X	-	-
07/31/2013	Ammonia Nitrogen	mg/l	3	5.86	95%	-	X	-
07/31/2013	Fecal Coliform	cts/100ml	200	1553	677%	-	-	X
08/31/2013	BOD5	mg/l	5	5.3	6%	X	-	-
08/31/2013	Ammonia Nitrogen	mg/l	3	9.97	232%	-	X	-
10/31/2013	Ammonia Nitrogen	mg/l	3	18.7	523%	-	-	X
10/31/2013	Fecal Coliform	cts/100ml	200	214	7%	X	-	-
11/30/2013	Ammonia Nitrogen	mg/l	6	8.38	40%	X	-	-
11/30/2013	Fecal Coliform	cts/100ml	200	2420	1110%	-	-	X
01/31/2014	BOD5	mg/l	10	11.8	18%	X	-	-
02/28/2014	Ammonia Nitrogen	mg/l	6	16.4	173%	-	X	-
05/31/2014	BOD5	mg/l	5	9.2	84%	-	X	-
05/31/2014	Fecal Coliform	cts/100ml	200	2420	1110%	-	-	X
07/31/2014	BOD5	mg/l	5	10.1	102%	-	X	-
08/31/2014	BOD5	mg/l	5	16	220%	-	X	-
09/30/2014	BOD5	mg/l	5	17.6	252%	-	X	-
09/30/2014	Ammonia Nitrogen	mg/l	3	16.4	447%	-	-	X
09/30/2014	Fecal Coliform	cts/100ml	200	2420	1110%	-	-	X
1/31/2015	BOD5	mg/l	10	11.7	17%	X	-	-
5/31/2015	Ammonia Nitrogen	mg/l	3	3.92	31%	X	-	-
5/31/2015	BOD5	mg/l	5	13.7	174%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY - May/2013 through June/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
06/30/2013	Ammonia Nitrogen	mg/l	6	17	183%	-	X	-
07/31/2013	Fecal Coliform	cts/100ml	400	1553	288%	-	X	-
08/31/2013	Ammonia Nitrogen	mg/l	6	9.97	66%	X	-	-
10/31/2013	Ammonia Nitrogen	mg/l	6	18.7	212%	-	X	-
11/30/2013	Fecal Coliform	cts/100ml	400	2420	505%	-	X	-
02/28/2014	Ammonia Nitrogen	mg/l	12	16.4	37%	X	-	-
05/31/2014	Fecal Coliform	cts/100ml	400	2420	505%	-	X	-
07/31/2014	BOD5	mg/l	10	10.1	1%	X	-	-
08/31/2014	BOD5	mg/l	10	16	60%	X	-	-
09/30/2014	BOD5	mg/l	10	17.6	76%	X	-	-
09/30/2014	Ammonia Nitrogen	mg/l	6	16.4	173%	-	X	-
09/30/2014	Fecal Coliform	cts/100ml	400	2420	505%	-	X	-
5/31/2015	BOD5	mg/l	10	13.7	37%	X	-	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	13	17	7



4/17/2015 Southernmost sand filter – flooded and caked.



04/17/2015 Northernmost sand filter clogged and flooded, overflowing



04/17/2015 Southernmost sand filter still receiving wastewater (turbidity in center)



04/17/2015 note turbidity in Northernmost flooded sand filter indicative of inflow



04/17/2015 Northernmost sand filter wastewater exiting through overflow pipe, bypassing treatment



04/17/2015 close up of same



04/17/2015 Empty chlorinator tubes



04/17/2015 Chlorinator tube with tablets wicked and stuck in tube 18" above waterline



04/17/2015 Empty de-chlorinator tube



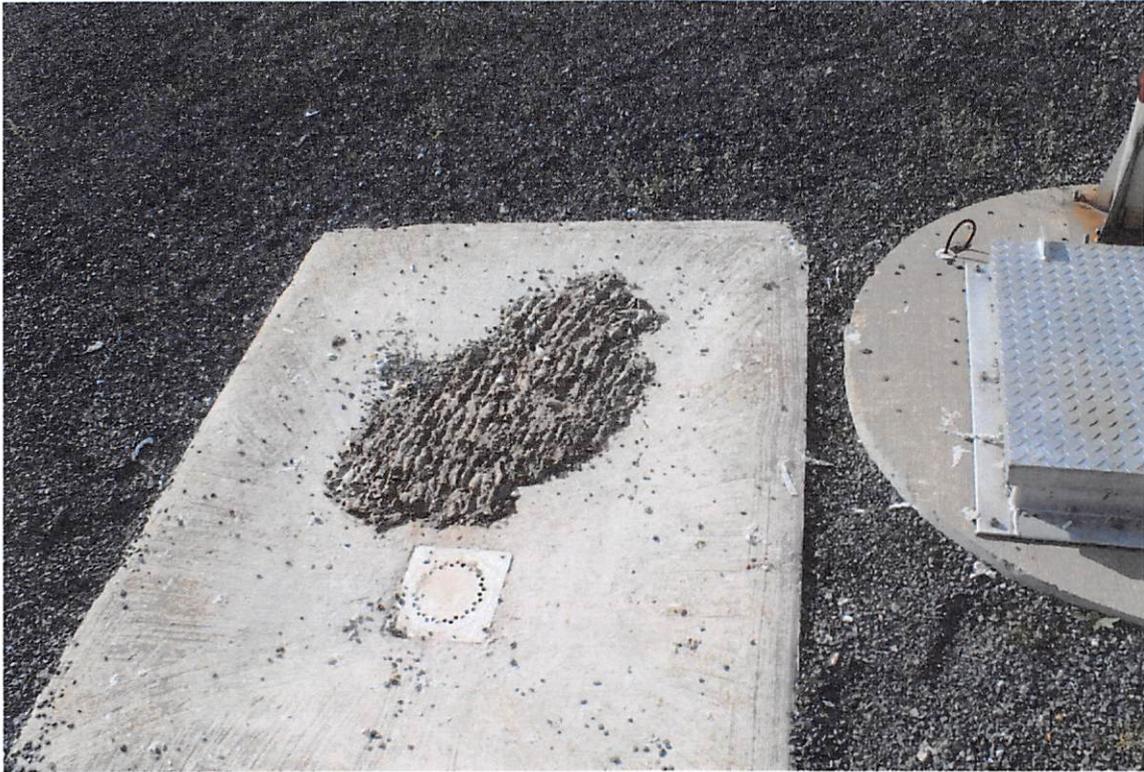
04/17/2015 De-chlorinator tube with bits of tablets, rest are wicked and stuck in tube above waterline



04/17/2015 floating solids on clarifier



04/17/2015 Clarifier weir box



04/17/2015 Non containerized trash on concrete pad to drain but exposed to vectors (note bird droppings and scattered trash)



04/17/2015 Discharge marker needing maintenance



04/17/2015 Sludge beds in waters of the State



04/17/2015 Sludge beds in waters of the State

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: HCRDA Receiving Stream:  

Treatment System Design Maximum Flow: 0.02 MGD

Treatment System Actual Average Flow: 0.0075 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	2d	2e	4ai	4aii	4aiii					
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1					
b)	Toxicity of Pollutant	0 to 3	0	0	1	1	1	1	1	1					
c)	Sensitivity of the Environment	0 to 3	0	0	1	1	1	1	1	1					
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1					
e)	Actual Exposure and Effects thereon	0 to 3	0	0	1	1	1	1	1	1					
<b>Average Potential for Harm Factor</b>			0.4	0.4	1	1	1	1	1	1	No	No	No	No	
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>													
	Degree of Non-Compliance	1 to 3	1	3	3	3	3	1	2	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.





## 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		\$5,320
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	(\$5,320)
6.2.b.3 - Cooperation with the Secretary		10	(\$5,320)
6.2.b.5 - Ability to Pay		61.86	(\$32,910)
<b>Penalty Adjustments</b>			<b>(\$38,200)</b>
<b>Penalty =</b>			<b>\$15,000</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> Economic benefit not warranted.	