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**ENVIRONMENTAL  
ENFORCEMENT**

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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  
Fax: (304) 926-0488

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: Huttonsville PSD  
Attn: Louise A. McAtee  
PO Box 277  
Mill Creek, WV 26280

DATE: June 30, 2016  
ORDER NO.: 8454

**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 Huttonsville PSD.

**FINDINGS OF FACT**

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

**WV0080535**

1. Huttonsville PSD operates a lagoon sewage system located in Mill Creek, Randolph County, West Virginia. Huttonsville PSD was reissued WV/NPDES Water Pollution Control Permit No. WV0080535 on April 19, 2012.
2. On July 30, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Huttonsville PSD's WV/NPDES permit were observed and documented:
  - a. Section A-Huttonsville PSD failed to meet the discharge limitations set forth in its WV/NPDES permit.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W-14-42-054-TPD was issued to Huttonsville PSD.

Promoting a healthy environment.

3. On October 29, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Huttonsville PSD's WV/NPDES permit were observed and documented:
  - a. Section A-Huttonsville PSD failed to meet the discharge limitations set forth in its WV/NPDES permit.

As a result of the aforementioned violations, NOV No. W-14-42-089-TPD was issued to Huttonsville PSD.

4. On September 20, 2015, WVDEP personnel conducted a review of facility records from the time period of September 1, 2013 through August 31, 2015. During this review, the following violations of the terms and conditions of Huttonsville PSD's WV/NPDES permit were observed:
  - a. Section A.002 – Eighty-three (83) exceedances of Huttonsville PSD's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
    - i. Minor violations-Forty (40)
    - ii. Moderate violations-Thirty-six (36)
    - iii. Major violations-Seven (7)

**WVR107130**

5. Huttonsville PSD is conducting construction activity in the form of a waterline extension project located near Valley Head, Randolph County, West Virginia. Huttonsville PSD was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR107130, on September 10, 2014.
6. On November 5, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:
  - a. 47CSR2 Section 3.2.a-Huttonsville PSD caused conditions not allowable by creating distinctly visible settleable solids in waters of the State. Specifically, Huttonsville PSD was conducting boring activity in Elkwater Fork, designated trout waters, causing solids to be discharged into the stream. No erosion and sediment controls were in place to prevent solids from entering the stream.

As a result of the aforementioned violation, Notice of Violation (NOV) No. I15-42-109-TPD was issued to Huttonsville PSD.

7. On October 22, 2015, WVDEP personnel and representatives of Huttonsville PSD met to discuss the terms and conditions of this Order.

8. On October 28 and November 14, 2015, Huttonsville PSD submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Huttonsville PSD's ability to pay a civil administrative penalty.
9. On March 14, 2016, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of Huttonsville PSD's WV/NPDES permit was observed and documented:
  - a. Section G.4.c-Huttonsville PSD failed to update and to modify its Storm Water Pollution Prevention Plan (SWPPP) when there was a change in construction that had a significant effect on the potential for the discharge of pollutants to the waters of the State. Specifically, the SWPPP was not modified to incorporate waste site acreage.

As a result of the aforementioned violation, NOV No. W16-42-015-TPD was issued to Huttonsville PSD.

### **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. Huttonsville PSD shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permits and pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, Huttonsville PSD shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Huttonsville PSD will achieve compliance with all terms and conditions of its WV/NPDES permits and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit Nos. WV0080535 and WV0115924, Registration No. WVR107130, and Order No. 8454. The plan of corrective action 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 Huttonsville PSD's Legislative Rule and permit violations, Huttonsville PSD shall be assessed a civil administrative penalty of ten thousand dollars (\$10,000) 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 \$833.33 due on or before September 1, 2016.  
Payment 2 in the amount of \$833.33 due on or before October 1, 2016.  
Payment 3 in the amount of \$833.33 due on or before November 1, 2016.  
Payment 4 in the amount of \$833.33 due on or before December 1, 2016.  
Payment 5 in the amount of \$833.33 due on or before January 1, 2017.  
Payment 6 in the amount of \$833.33 due on or before February 1, 2017.  
Payment 7 in the amount of \$833.33 due on or before March 1, 2017.  
Payment 8 in the amount of \$833.33 due on or before April 1, 2017.  
Payment 9 in the amount of \$833.33 due on or before May 1, 2017.  
Payment 10 in the amount of \$833.33 due on or before June 1, 2017.  
Payment 11 in the amount of \$833.33 due on or before July 1, 2017.  
Payment 12 in the amount of \$833.37 due on or before August 1, 2017.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. 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**

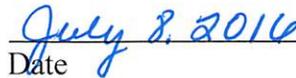
1. Huttonsville PSD hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Huttonsville PSD agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Huttonsville PSD 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 Huttonsville PSD 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, Huttonsville PSD 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 Huttonsville PSD becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Huttonsville PSD 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 Huttonsville PSD 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 Huttonsville PSD (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 Huttonsville PSD 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 Huttonsville PSD 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 Huttonsville PSD, its successors and assigns.
7. This Order shall terminate upon Huttonsville PSD's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



\_\_\_\_\_  
Louise A. McAtee  
Huttonsville PSD



\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

Table One: Huttonsville PSD DMR Exceedance Summary

Outlet 002 DMR Exceedances - AVG. MONTHLY - September 2013 through August 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
9/13	Lead	mg/l	0.0011	0.0012	9%	X	-	-
11/13	Nitrogen, Ammonia	mg/l	4	7	75%	-	X	-
12/13	Nitrogen, Ammonia	lbs/day	13.7	36.1	164%	-	X	-
12/13	Nitrogen, Ammonia	mg/l	4	12.8	220%	-	X	-
1/14	Nitrogen, Ammonia	lbs/day	13.7	25.2	84%	-	X	-
1/14	Nitrogen, Ammonia	mg/l	4	7.5	88%	-	X	-
2/14	Nitrogen, Ammonia	lbs/day	13.7	31	126%	-	X	-
2/14	Nitrogen, Ammonia	mg/l	4	9.2	130%	-	X	-
3/14	Nitrogen, Ammonia	lbs/day	13.7	27.7	102%	-	X	-
3/14	Nitrogen, Ammonia	mg/l	4	9	125%	-	X	-
4/14	Nitrogen, Ammonia	lbs/day	13.7	23.4	71%	-	X	-
4/14	Nitrogen, Ammonia	mg/l	4	7	75%	-	X	-
5/14	Nitrogen, Ammonia	lbs/day	6.8	32.4	376%	-	-	X
5/14	Nitrogen, Ammonia	mg/l	2	16.3	715%	-	-	X
5/14	Copper	mg/l	0.0067	0.0106	58%	-	X	-
6/14	Nitrogen, Ammonia	lbs/day	6.8	24.9	266%	-	X	-
6/14	Nitrogen, Ammonia	mg/l	2	13.4	570%	-	-	X
7/14	BOD	mg/l	10	16.56	66%	-	X	-
7/14	Nitrogen, Ammonia	lbs/day	6.8	9.9	46%	-	X	-
7/14	Nitrogen, Ammonia	mg/l	2	6.4	220%	-	X	-
8/14	BOD	mg/l	10	16.25	63%	-	X	-
9/14	BOD	mg/l	10	19.26	93%	-	X	-
9/14	Nitrogen, Ammonia	mg/l	2	2.1	5%	X	-	-
10/14	Copper	mg/l	0.0067	0.0079	18%	X	-	-
10/14	Nitrogen, Ammonia	mg/l	2	4.4	120%	-	X	-
11/14	Nitrogen, Ammonia	lbs/day	13.7	18	31%	X	-	-
11/14	Nitrogen, Ammonia	mg/l	4	6.1	53%	-	X	-
11/14	Copper	mg/l	0.0067	0.0088	31%	X	-	-
12/14	Nitrogen, Ammonia	lbs/day	13.7	37.4	173%	-	X	-
12/14	Nitrogen, Ammonia	mg/l	4	11.7	193%	-	X	-
1/15	Nitrogen, Ammonia	lbs/day	13.7	19.5	42%	-	X	-
1/15	Nitrogen, Ammonia	mg/l	4	5.9	48%	-	X	-
2/15	Nitrogen, Ammonia	lbs/day	13.7	27	97%	-	X	-
2/15	Nitrogen, Ammonia	mg/l	4	8.2	105%	-	X	-
3/15	Nitrogen, Ammonia	lbs/day	13.7	17.4	27%	X	-	-
3/15	Nitrogen, Ammonia	mg/l	4	5.1	28%	X	-	-
4/15	Nitrogen, Ammonia	lbs/day	13.7	17.7	29%	X	-	-
4/15	Nitrogen, Ammonia	mg/l	4	5.6	40%	X	-	-
5/15	Nitrogen, Ammonia	lbs/day	6.8	27.5	304%	-	-	X
5/15	Nitrogen, Ammonia	mg/l	2	9.3	365%	-	-	X
6/15	Nitrogen, Ammonia	lbs/day	6.8	31.8	368%	-	-	X
6/15	Nitrogen, Ammonia	mg/l	2	14.1	605%	-	-	X
7/15	Nitrogen, Ammonia	mg/l	2	6.9	245%	-	X	-
7/15	Nitrogen, Ammonia	lbs/day	6.8	23.2	241%	-	X	-

Table One: Huttonsville PSD DMR Exceedance Summary

Outlet 002 DMR Exceedances - MAX. DAILY - September 2013 through August 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
12/13	Nitrogen, Ammonia	lbs/day	27.4	36.1	32%	X	-	-
12/13	Nitrogen, Ammonia	mg/l	8	12.8	60%	X	-	-
2/14	Nitrogen, Ammonia	lbs/day	27.4	31	13%	X	-	-
2/14	Nitrogen, Ammonia	mg/l	8	9.2	15%	X	-	-
3/14	Nitrogen, Ammonia	lbs/day	27.4	27.7	1%	X	-	-
3/14	Nitrogen, Ammonia	mg/l	8	9	13%	X	-	-
5/14	Nitrogen, Ammonia	lbs/day	13.7	32.4	136%	-	X	-
5/14	Nitrogen, Ammonia	mg/l	4	16.3	308%	-	X	-
6/14	Nitrogen, Ammonia	lbs/day	13.7	24.9	82%	X	-	-
6/14	Nitrogen, Ammonia	mg/l	4	13.4	235%	-	X	-
7/14	Nitrogen, Ammonia	mg/l	4	6.4	60%	X	-	-
10/14	Nitrogen, Ammonia	lbs/day	13.7	15.7	15%	X	-	-
10/14	Nitrogen, Ammonia	mg/l	4	7.8	95%	X	-	-
11/14	Nitrogen, Ammonia	lbs/day	27.4	31.2	14%	X	-	-
11/14	Nitrogen, Ammonia	mg/l	8	10.6	33%	X	-	-
12/14	Nitrogen, Ammonia	lbs/day	27.4	37.4	36%	X	-	-
12/14	Nitrogen, Ammonia	mg/l	8	11.7	46%	X	-	-
2/15	Nitrogen, Ammonia	lbs/day	27.4	29.3	7%	X	-	-
2/15	Nitrogen, Ammonia	mg/l	8	8.9	11%	X	-	-
4/15	Nitrogen, Ammonia	lbs/day	27.4	33.7	23%	X	-	-
5/15	Nitrogen, Ammonia	lbs/day	13.7	28.7	109%	-	X	-
5/15	Nitrogen, Ammonia	mg/l	4	9.7	143%	-	X	-
6/15	Nitrogen, Ammonia	lbs/day	13.7	64.2	369%	-	X	-
6/15	Nitrogen, Ammonia	mg/l	4	17.4	335%	-	X	-
7/15	Nitrogen, Ammonia	mg/l	4	7.2	80%	X	-	-
7/15	Nitrogen, Ammonia	lbs/day	13.7	23.2	69%	X	-	-

Outlet 002 Exceedances - Minimum 85% Removal - September 2013 through August 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
1/14	BOD5	%	85.0	66	22.4%	X	-	-
1/14	Suspended Solids	%	85.0	79	7.1%	X	-	-
2/14	BOD5	%	85.0	79	7.1%	X	-	-
4/14	BOD5	%	85.0	72	15.3%	X	-	-
9/14	BOD5	%	85.0	84	1.2%	X	-	-
12/14	BOD5	%	85.0	68	20.0%	X	-	-
12/14	Suspended Solids	%	85.0	75	11.8%	X	-	-
1/15	BOD5	%	85.0	78	8.2%	X	-	-
1/15	Suspended Solids	%	85.0	81	4.7%	X	-	-
2/15	BOD5	%	85.0	84	1.2%	X	-	-
3/15	BOD5	%	85.0	82	3.5%	X	-	-
3/15	Suspended Solids	%	85.0	65	23.5%	X	-	-
7/15	Suspended Solids	%	85.0	53	37.6%	-	X	-

Outlet 002 Totals		Degree of non-compliance		
		Min	Mod	Maj
		40	36	7

**Valley Head/Mingo Waterline Extension Project**

**Photo Log**



**Boring under Elkwater Fork. Silt coming into stream.**



**Silt water discharging out hose on bank and directly into creek. No E & S controls.**



Plume of sediment going down Elkwater Fork.



Creek bore hole site along Rt 219 S.

Photo Log



1. Fill area looking South along bank of Tygart River at Valley Head.



2. Fill area looking North along bank of Tygart River at Valley Head.



3. Fill area looking North along bank of Tygart River at Valley Head.



4. Fill site from the road across the river.

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Huttonsville PSD

Receiving Stream:

Treatment System Design Maximum Flow: 0.41 MGD

Treatment System Actual Average Flow: 0.33 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			4ai	4aii	4aiii	6a								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	1	1	1								
c)	Sensitivity of the Environment	0 to 3	1	1	1	1								
d)	Length of Time	1 to 3	1	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1								
<b>Average Potential for Harm Factor</b>			1	1	1	1	No							
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 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.





## 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		\$11,000
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$300		\$300
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	(\$11,000)
6.2.b.3 - Cooperation with the Secretary		10	(\$11,000)
6.2.b.5 - Ability to Pay		81.209	(\$89,330)
<b>Penalty Adjustments</b>			<b>(\$100,000)</b>
<b>Penalty =</b>			<b>\$10,000</b>

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	\$300
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$300</b>
<b>Comments:</b> Avoided cost of sediment bag installation and maintenance.	