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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  
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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: Jefferson Cnty Bd Of Ed  
Bondy Gibson  
110 Mordington Ave.  
Charles Town, WV 25414

DATE: October 4, 2016  
ORDER NO.: 8580

**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 Jefferson Cnty Bd Of Ed (hereinafter "JCBOE").

**FINDINGS OF FACT**

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

**WVG551158 – Blue Ridge Elementary School**

1. JCBOE operates a wastewater treatment facility at Blue Ridge Elementary School, near Charles Town, Jefferson County, West Virginia. JCBOE was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG551158, on September 9, 2011. The WV/NPDES permit was administratively extended until March 31, 2016.
2. On May 4, 2016, JCBOE submitted an administratively complete WV/NPDES permit application.
3. On May 9, 2016, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, WVDEP personnel observed that JCBOE failed to properly operate and maintain the facility. Specifically, there was a hole in the sand bed and vegetation growth in the filter. A

violation of the following section of WV Legislative Rules was observed and documented:

- a. 47CSR10 Section 4.3-JCBOE failed to submit the renewal application prior to expiration of the aforementioned WV/NPDES permit.

As a result of the aforementioned violation, Notice of Violation (NOV) No. w16-19-045-mkk was issued to JCBOE.

4. On June 2, 2016, WVDEP personnel conducted a review of facility records from the time period of April 1, 2014 through March 31, 2016. During this review, the following violations of the terms and conditions of JCBOE's WV/NPDES permit were observed:
  - a. Section A - Five (5) exceedances of JCBOE's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
    - i. Minor violations-four (4)
    - ii. Moderate violations-one (1)

**WVG551159 – Page Jackson Elementary School**

5. JCBOE operates a wastewater treatment facility at Page Jackson Elementary School, near Charles Town, Jefferson County, West Virginia. JCBOE was issued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG551159 on September 9, 2011. The WV/NPDES permit was administratively extended until March 31, 2016.
6. On May 4, 2016, JCBOE submitted an administratively complete WV/NPDES permit application.
7. On May 9, 2016, 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. 47CSR10 Section 4.3-JCBOE failed to submit the renewal application prior to expiration of the aforementioned WV/NPDES permit.

As a result of the aforementioned violation, NOV No. w16-19-046-mkk was issued to JCBOE.

8. On June 2, 2016, WVDEP personnel conducted a review of facility records from the time period of April 1, 2014 through March 31, 2016. During this review, the following violation of the terms and conditions of JCBOE's WV/NPDES permit was observed:
  - a. Section A – One (1) exceedance of JCBOE's permit parameters was observed and documented (Table 1). The exceedance can be further defined as:
    - i. Minor violation-one (1)
9. On September 27, 2016, WVDEP personnel met with representatives of JCBOE to discuss the terms and conditions of this Order.

## **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. JCBOE shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of JCBOE's Legislative Rule and permit violations, JCBOE shall be assessed a civil administrative penalty of four thousand two hundred eighty dollars (\$4,280) 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 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. JCBOE 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, JCBOE 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, JCBOE 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 JCBOE 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, JCBOE 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 JCBOE becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and JCBOE 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 JCBOE 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 JCBOE (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 JCBOE 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 JCBOE 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 JCBOE, its successors and assigns.
7. This Order shall terminate upon JCBOE's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Bondy Gibson  
Jefferson Cnty Bd Of Ed

10/11/16  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

*revised March 2013*

**RECEIVED**

OCT 17 2016

ENVIRONMENTAL  
ENFORCEMENT



5/9/16: Hole in the sand filtering system.

Table One: JCBOE DMR Exceedance Summary

**Blue Ridge Elementary School (WVG551158)**

Outlet 001 DMR Exceedances - AVG. MONTHLY - 4/1/14 through 3/31/16						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
3/16	BOD	mg/l	10	30	200%	-	X	-
3/16	TSS	mg/l	30	42	40%	X	-	-
12/15	BOD	mg/l	10	11	10%	X	-	-
9/15	BOD	mg/l	5	7	40%	X	-	-

Outlet 001 DMR Exceedances - MAX. DAILY - 4/1/14 through 3/31/16						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
3/16	BOD	mg/l	20	30	50%	X	-	-

Outlet 001 Totals						Degree of non-compliance		
						Min	Mod	Maj
						4	1	0

**Page Jackson Elementary School (WVG551159)**

Outlet 001 DMR Exceedances - pH INSTANTANEOUS. MAX. - 4/1/14 through 3/31/16						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
3/16	pH	S.U.	9.0	9.6	80.0%	X		

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

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Jefferson County BOE Receiving Stream:  

Treatment System Design Maximum Flow: 0.012 MGD

0.00227 and

Treatment System Actual Average Flow: 0.00289425 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#													
			3a	4ai	4aii	7a	8ai									
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1									
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1									
d)	Length of Time	1 to 3	1	1	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1									
<b>Average Potential for Harm Factor</b>			1	1	1	1	1	No								
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>														
	Degree of Non-Compliance	1 to 3	1	1	2	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.





## 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		\$850
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)		40	(\$3,400)
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	(\$850)
6.2.b.3 - Cooperation with the Secretary		10	(\$850)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>(\$4,220)</b>
<b>Penalty =</b>			<b>\$4,280</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.	