west virginia department of environmental protection

Environmental Enforcement
601 57th Street SE
Charleston, WV 25304
Telephone: (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: Kanawha Falls PSD
Richard Wagner, General Manager
PO Box 448
Gauley Bridge, WV 25085

DATE: December 30, 2014

ORDER NO.: 8170

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 Kanawha Falls PSD (hereinafter "Kanawha Falls").

FINDINGS OF FACT

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

1. Kanawha Falls operates a 1.875 MGD wastewater collection and treatment system located in Deep Water, Fayette County, West Virginia. Kanawha Falls was reissued WV/NPDES Water Pollution Control Permit No. WV0034991 on April 26, 2011.

2. On April 12, 2010, West Virginia Department of Environmental Protection (WVDEP) issued Order No. 7014 to Kanawha Falls. The Order was issued in response to WV/NPDES permit violations observed and documented during a January 21-22, 2010 inspection and a subsequent review of the facility's spill records. The Order required that Kanawha Falls submit an approved plan of corrective action within twenty (20) days of the effective date of the Order.

3. On October 25-26, 2011, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Kanawha Falls' WV/NPDES permit were observed and documented:

a. Appendix A.II.1 – The permittee failed to properly operate and maintain the facility.
b. Section C.14 – The permittee allowed a discharge from a point other than a permitted outfall.
c. Section E.4 – The permitttee failed to enforce industrial user compliance with the terms and conditions of the WV/NPDES permit.

As a result of the aforementioned violations, Notice of Violation (NOV) No. CM-JNH-101211-1 was issued to Kanawha Falls.

4. On April 11, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Kanawha Falls' WV/NPDES permit were observed and documented:

a. Section C.14 - The permittee allowed a discharge from a point other than a permitted outfall.
b. Section E - The permitttee failed to enforce industrial user compliance with the terms and conditions of the WV/NPDES permit.
c. Appendix A.II.1 – The permittee failed to properly operate and maintain the facility.

As a result of the aforementioned violations, NOV Nos. W12-10-0411A through E-BDV were issued to Kanawha Falls.

5. On July 16, 2012, WVDEP personnel conducted an inspection of the facility's lift stations. During the inspection, a violation of the following section of the terms and conditions of Kanawha Falls' WV/NPDES permit was observed and documented:

a. Appendix A.II.1 – The permittee failed to properly operate and maintain the facility.

6. On May 28, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of WV State Code and Kanawha Falls' WV/NPDES permit were observed and documented:

a. 22-11-1 et seq. – Kanawha Falls failed to comply with Order No. 7014 by failing to adhere to the plan of corrective action approved by WVDEP personnel on September 15, 2010. The plan stated that an Inflow and Infiltration (I/I) plan would be submitted by September 30, 2010. However, the plan was not received by WVDEP personnel.
b. Appendix A.II.1 – The permittee failed to properly operate and maintain the facility. Specifically:

i. None of the three pumps at the triplex Yard Lift Station were operational.
ii. The Yard Lift Station's dry well sump pump was not operational.
iii. The Yard Lift Station's dry well ventilation system was not operational.
iv. The automatic bar screen was out of service.
v. The plant's back-up generator was out of service.

vi. One (1) of the three (3) rotameters was out of service in the chlorine feed room.
vii. The Self Contained Breathing Apparatus (SCBA) outside of the chlorine and sulfur dioxide room were due for service in 2012.
viii. The following duplex lift stations were operating with only one (1) properly working pump: One (1), Two (2), Three (3), Five (5), Six (6), Seven (7), Nine (9), Ten (10), Eleven (11), and Twelve (12).
ix. Lift Station No. Four (4) contained a set of pump guide rails that came loose from the bracket.
x. There was an excessive amount of floatables in the treatment units.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. CM-DAK-05-28-14-NOV1 and CM-DAK-05-28-14-NOV2 were issued to Kanawha Falls.

7. On August 29, 2014, WVDEP personnel conducted a review of facility records from the time period of June 2012 through July 2014. During this review, the following violations of the terms and conditions of Kanawha Falls' WV/NPDES permit were observed:

   a. Section A.001 - Six (6) exceedances of Kanawha Falls' permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
      i. Minor violations-Five (5)
      ii. Major violations-One (1)

8. On October 28, 2014, WVDEP personnel and representatives of Kanawha Falls met 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. Kanawha Falls 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, Kanawha Falls shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Kanawha Falls 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. WV0034991 and Order No. 8170. The plan of corrective action shall be submitted to:

WVDEP Environmental Inspector Supervisor
Compliance Monitoring
PO Box 662
Teays, WV 25569

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 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 Kanawha Falls' West Virginia Code and permit violations, Kanawha Falls shall be assessed a civil administrative penalty of eight thousand nine hundred forty dollars ($8,940) 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 $1,490 due on or before March 1, 2015.
Payment 2 in the amount of $1,490 due on or before April 1, 2015.
Payment 3 in the amount of $1,490 due on or before May 1, 2015.
Payment 4 in the amount of $1,490 due on or before June 1, 2015.
Payment 5 in the amount of $1,490 due on or before July 1, 2015.
Payment 6 in the amount of $1,490 due on or before August 1, 2015.

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 57th Street SE
Charleston, WV 25304

OTHER PROVISIONS

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

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

Richard Wagner
Richard Wagner, General Manager
Kanawha Falls PSD

1-6-15
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

RECEIVED
JAN 0 8 2015
ENVIRONMENTAL
ENFORCEMENT

Table One:
Kanawha Falls PSD DMR Exceedance Summary Table

Outlet 001 DMR Exceedances - AVG. MONTHLY - June 2012 through July 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
6/30/12	Total Ammonia Nitrog	mg/l	123.5	167.89	36%	X	-	-

Outlet 001 DMR Exceedances - MAX. DAILY - June 2012 through July 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
7/31/14	Fecal Coliform	Cnts/100m	400	6000	1400%	-	-	X

Outlet 001 Exceedances - Minimum 85% Removal - AVG. MONTHLY - June 2012 through July 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
3/31/13	BOD % Removal	mg/l	85.0	82.0	3.5%	X	-	-
2/28/14	BOD % Removal	mg/l	85.0	82	13%	X	-	-
2/28/14	Suspended Solids % Re	mg/l	85.0	81	12%	X	-	-
7/31/14	BOD % Removal	mg/l	85.0	62	14%	X	-	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	5	0	1

Kanawha Falls PSD Photo Log

Photo No. 1: 5/28/2014, 0923 Hrs– Auxiliary Pump at Yard Lift Station

Photo No. 2: 5/28/2014, 0925Hrs – Flooded Dry well of Yard Lift Station

Kanawha Falls PSD Photo Log

Photo No. 3: 5/28/2014, 0927Hrs– Dismantled Bar Screen

Photo No. 4: 5/28/2014, 1012Hrs– Dismantled rotameter

Kanawha Falls PSD Photo Log

Photo No. 5: 5/28/2014, 1017Hrs– Expired SCBA Tag

Photo No. 6: 5/28/2014, 0949Hrs– Vegetation growing on floatables in Aeration Basin

Kanawha Falls PSD Photo Log

Photo No. 7: 5/28/2014, 0956 Hrs– Vegetation in Treatment Basin

Photo No. 8: 5/28/2014, 0957Hrs– More debris in Treatment Unit

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Kanawha Falls PSD **Receiving Stream:**

Treatment System Design Maximum Flow: 1.875 **MGD**

Treatment System Actual Average Flow: 1.03 **MGD** (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF# 6a	6b	7ai	7aii									
a)	Amount of Pollutant Released	1 to 3	1	1	1	1									
b)	Toxicity of Pollutant	0 to 3	0	1	1	1									
c)	Sensitivity of the Environment	0 to 3	0	1	1	1									
d)	Length of Time	1 to 3	3	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	0	1	1	1									
	Average Potential for Harm Factor		0.8	1	1	1	No	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3	3	3	1	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.

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

1)	Potential for Harm Factor	Factor Range	FOF#												
a)	Amount of Pollutant Released	1 to 3													
b)	Toxicity of Pollutant	0 to 3													
c)	Sensitivity of the Environment	0 to 3													
d)	Length of Time	1 to 3													
e)	Actual Exposure and Effects thereon	0 to 3													
	Average Potential for Harm Factor		No	No	No	No	No	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 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
6a	Minor	Major	$1,900	1	$1,900
6b	Minor	Major	$2,000	1	$2,000
7ai	Minor	Minor	$1,000	4	$4,000
7aii	Minor	Major	$2,000	1	$2,000
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
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					$9,900

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		$990
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	($990)
6.2.b.3 - Cooperation with the Secretary		10	($990)
6.2.b.5 - Ability to Pay			$0
Penalty Adjustments			**($960)**
Penalty =			**$8,940**

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:	