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MAY 25 2012

west virginia department of environmental protection

ENVIRONMENTAL ENFORCEMENT

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

May 18, 2012

Ms. Ruth E. Caplinger
Mason County Board of Education
917 Willow Lane
Pt. Pleasant, WV 25515

CERTIFIED RETURN RECEIPT REQUESTED
91 7199 9991 7030 8791 6126
RE: Violation of Chapter 22, Article 11
of the WV State Code

Dear Ms. Caplinger:

Enclosed is revised CONSENT ORDER NUMBER 7449 dated May 18, 2012. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to Mason County Board of Education violating Chapter 22, Article 11 of the WV State Code at its facilities located in Mason County, West Virginia. This revision is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,

[Handwritten signature of Michael A. Zeto]

Michael A. Zeto
Chief Inspector

Enclosure

- cc: Scott G. Mandirola, Director, DWWM (via e-mail)
Yogesh Patel, Asst. Director, DWWM/Permits
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
Laura McGee, Environmental Resources Specialist, EE (via e-mail)
Cynthia Musser, Environmental Inspector Supervisor, EE/WW (via e-mail)
Kevin Saunders, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)



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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) 926-0495  
Fax: (304) 926-0463

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: Ms. Ruth E. Caplinger  
Mason County Board of Education  
917 Willow Lane  
Pt. Pleasant, WV 25515

DATE: May 18, 2012

ORDER NO.: 7449

**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 Mason County Board of Education (hereinafter "Mason BOE").

**FINDINGS OF FACT**

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

1. Mason BOE operates four (4) sewage treatment plants located in Mason County, West Virginia. Mason BOE was issued WV/NPDES Water Pollution Control Permit No. WV0103110 with registration numbers WVG551209, WVG551210, WVG551211, and WVG551212 for Ashton Elementary, Beale Elementary, Roosevelt Elementary, and Leon Elementary, respectively.
2. The discharge of pollutants into waters of the state by Mason BOE in amounts that exceed permitted limitations was noted in eight (8) of the most recent eight (8) Discharge Monitoring Reports (DMRs) for Ashton Elementary. These permit exceedances are further described and detailed in Attachment A. These violations are summarized as follows:
  - a. Thirteen (13) minor exceedances
  - b. Ten (10) moderate exceedances
  - c. Three (3) major exceedances

Promoting a healthy environment.

3. The discharge of pollutants into waters of the state by Mason BOE in amounts that exceed permitted limitations was noted in eight (8) of the most recent eight (8) DMRs for Beale Elementary. These permit exceedances are further described and detailed in Attachment A. These violations are summarized as follows:
  - a. Thirteen (13) minor exceedances
  - b. Ten (10) moderate exceedances
  - c. Four (4) major exceedances
  
4. The discharge of pollutants into waters of the state by Mason BOE in amounts that exceed permitted limitations was noted in eight (8) of the most recent eight (8) DMRs for Roosevelt Elementary. These permit exceedances are further described and detailed in Attachment A. These violations are summarized as follows:
  - a. Thirteen (13) minor exceedances
  - b. Nine (9) moderate exceedances
  - c. Eleven (11) major exceedances
  
5. The discharge of pollutants into waters of the state by Mason BOE in amounts that exceed permitted limitations was noted in seven (7) of the most recent eight (8) DMRs for Leon Elementary. These permit exceedances are further described and detailed in Attachment A. These violations are summarized as follows:
  - a. Six (6) minor exceedances
  - b. Six (6) moderate exceedances
  - c. Eight (8) major exceedances
  
6. Since Mason BOE employed a new Director of Maintenance, Mason BOE has made significant steps toward correcting the violations discussed in this Order, including hiring a contractor to assess problems at the plant and formally re-training the plant operator.
  
7. On October 12, 2011, WVDEP personnel and representatives of Mason BOE met to discuss the terms and conditions of this Order.
  
8. Subsequent to the October 12, 2011 meeting, Mason BOE submitted a plan of corrective action for its facilities. The plan of corrective action has been approved and will be incorporated into this Order.
  
9. On January 18, 2012, Mason BOE submitted financial information which WVDEP evaluated to determine Mason BOE'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:

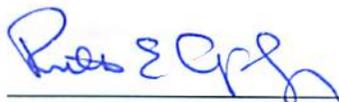
1. Mason BOE shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit, and its approved plan of corrective action for its facilities.
2. In accordance with Section G.6 of WV0103110, Mason BOE shall have operators attend the 1-S training course sponsored by the Environmental Training Center at Cedar Lakes, WV.
3. Mason BOE shall immediately have operators maintain operational logs to ensure adequate operation and maintenance of all facilities.
4. Because of Mason BOE's permit violations, Mason BOE shall be assessed a civil administrative penalty of three thousand four hundred fifty-five dollars (\$3,455) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. 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. Mason BOE 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, Mason BOE 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, Mason BOE 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 Mason BOE 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, Mason BOE 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 Mason BOE 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 Mason BOE 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 Mason BOE (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 Mason BOE 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 Mason BOE 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 Mason BOE, its successors and assigns.
7. This Order shall terminate upon Mason BOE's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



\_\_\_\_\_  
Mason County Board of Education  
Ms. Ruth E. Caplinger

5/24/12

\_\_\_\_\_  
Date

Public Notice begin: \_\_\_\_\_  
Date

Public Notice end: \_\_\_\_\_  
Date

*Suzanne Dickens* 5-24-12  
Superintendent

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

\_\_\_\_\_  
Date

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Mason County BOE

Receiving Stream:

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#												
			2a	2b	2c	3a	3b	3c	4a	4b	4c	5a	5b	5c	
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1	
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1	
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1	1	1	1	1	1	1	
d)	Length of Time	1 to 3	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	1	1	1	1	1	1	1	
<b>Average Potential for Harm Factor</b>			1	1	1	1	1	1	1	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	2	3	1	2	3	1	2	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.



		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
2a	Minor	Minor	\$1,000	5	\$5,000
2b	Minor	Moderate	\$1,500	1	\$1,500
2c	Minor	Major	\$2,000	1	\$2,000
3a	Minor	Minor	\$1,000	8	\$8,000
3b	Minor	Moderate	\$1,500	5	\$7,500
3c	Minor	Major	\$2,000	2	\$4,000
4a	Minor	Minor	\$1,000	6	\$6,000
4b	Minor	Moderate	\$1,500	4	\$6,000
4c	Minor	Major	\$2,000	6	\$12,000
5a	Minor	Minor	\$1,000	3	\$3,000
5b	Minor	Moderate	\$1,500	5	\$7,500
5c	Minor	Major	\$2,000	3	\$6,000
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
<b>Total Base Penalty</b>					<b>\$68,500</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 -			\$0
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)		10	(\$6,850)
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	(\$6,850)
6.2.b.3 - Cooperation with the Secretary		10	(\$6,850)
6.2.b.5 - Ability to Pay		65	(\$44,525)
<b>Penalty Adjustments</b>			<b>(\$65,045)</b>
<b>Penalty =</b>			<b>\$3,455</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>	