



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: City of New Martinsville
Honorable N. Keith Nelsen, Mayor
191 Main Street
New Martinsville, WV 26155

DATE: October 8, 2014

ORDER NO.: 8169

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 the City of New Martinsville (hereinafter "New Martinsville").

FINDINGS OF FACT

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

1. New Martinsville operates a hydroelectric plant located in New Martinsville, Wetzel County, West Virginia. New Martinsville was reissued WV/NPDES Water Pollution Control Permit No. WV0114499 on August 30, 2012.
2. On July 10, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel responded to an emergency notification of an oil spill. During the investigation, a violation of the following section of WV Legislative Rules was observed and documented:
 - a. 47CSR2 Section 3.2.a – New Martinsville created conditions not allowable in waters of the State. Specifically, oil from a malfunctioning turbine escaped, causing a visible plume in the Ohio River for more than seven (7) miles downstream.

As a result of the aforementioned violation, Notice of Violation (NOV) No. W-NW-TAM-071014-001 was issued to New Martinsville.

3. On October 7, 2014, WVDEP personnel and a representative of New Martinsville discussed, by telephone, 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. New Martinsville shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, New Martinsville shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when New Martinsville will achieve compliance with all pertinent laws and rules. The plan of correction action shall include, but not be limited to, detailed provisions for:
 - a. Completion of repairs to Unit 2.
 - b. Evacuation of Unit 1.
 - c. Control of contaminated water in Unit 1.
 - d. Decontamination of Unit 1.
 - e. Control of contamination on the Ohio River until site remediation is complete.

The plan of corrective action shall make reference to WV/NPDES Permit No. WV0114499 and Order No. 8169. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road
Fairmont, WV 26554**

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. Within thirty (30) days of the effective date of this Order, City of New Martinsville shall submit for approval a Stormwater Pollution Prevention Plan (SWPPP) and a Groundwater Pollution Plan (GPP). The WVDEP approved SWPPP and GPP shall become incorporated into the terms and conditions of WV/NPDES Permit No. WV0114499. These plans shall be reviewed and/or revised annually or within thirty (30) days of a spill/release, Discharge Monitoring Report (DMR) exceedance, or a change in process/operations. These plans shall include, but not be limited to, the following:
- a. A list of emergency contacts.
 - b. Contracted emergency environmental remediation contact information.
 - c. A risk identification and assessment.
 - d. A materials inventory of all potential contaminants.
 - e. A description of all operations which have the potential to cause pollution.
 - f. A list of procedures designed to protect against potential pollution sources.
 - g. A procedure to identify potential pollution sources.
 - h. Procedures to be employed in the design of a new equipment/operation.
 - i. A list of all activities carried out under other regulatory programs that have relevance to potential pollution sources.
 - j. Provisions for all employees to be instructed and trained on their responsibility to ensure potential pollution sources are identified and spill response procedures are implemented.
 - k. Provisions for quarterly inspections, which shall include all elements of the SWPPP and GPP.
 - l. A pollution prevention committee.
 - m. An emergency response committee, including contact information.
 - n. A preventative maintenance program.
 - o. Procedures for spill response and remediation.
 - p. Procedures for internal reporting and record keeping of releases.
 - q. A detailed site map depicting all sources of potential pollution, drainages, and outfalls.
 - r. A detailed description of each outfall.
 - s. Identification of and contact information for the nearest downstream public water supply.
 - t. A list of all materials on site which may be implemented in the event of a release.

The SWPPP and GPP shall make reference to WV/NPDES Permit No. WV0114499 and Order No. 8169 and shall be electronically submitted. Any questions regarding the submittal process shall be directed to WVDEP DWWM-Permitting Section at (304) 926-0495.

A copy of the SWPPP and GPP shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road
Fairmont, WV 26554**

A copy of the SWPPP and GPP shall also be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

4. Because of New Martinsville's Legislative Rule violations, New Martinsville shall be assessed a civil administrative penalty of four thousand six hundred thirty dollars (\$4,630) 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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

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

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



Honorable N. Keith Nelsen, Mayor
City of New Martinsville



Date

Public Notice begin:

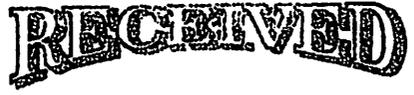
Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management
revised March 2013

Date



OCT 14 2014

ENVIRONMENTAL
ENFORCEMENT

**WV Department of Environmental Protection
Environmental Enforcement
Photo Log**

Company Name: City of New Martinsville

Facility Name: Hydroelectric Plant

Location: 39°40.0208'N 80°51.7604'W - Wetzel Co.

Stream: Ohio River

Photo #	Date	Time	Description	Coordinates	Notice Of Violation
IMG_0442	7/11/14	05:52	Oil on the Ohio River between the hydroelectric plant and WV shore.	39°40.0208'N 80°51.7604'W	W-NW-TAM-071014-001
IMG_0444	7/11/14	06:06	Oil plume located downstream of release near handicap fishing area.		
IMG_0451	7/11/14	06:35	Oil plume downstream of release looking upstream toward Hannibal Lock and Dam.		
IMG_5759	7/11/14	11:52	Oil plume visible downstream of release. Hydroelectric plant located in the top right corner of photo. WV is on the right, Ohio is on the left. Hydroelectric plant is located downstream of river mile 126.		
IMG_5760	7/11/14	11:52	Visible oil plume downstream of release. Ohio located at the top of the photo, WV is at the bottom. Bridge to Ohio is located near river mile 127.		
IMG_5767	7/11/14	11:54	Visible oil plume on Ohio River. WV is located at the top of the photo. The mouth of Fishing Creek is visible in the top center of photo which is located at approximately river mile 128.5.		
IMG_5770	7/11/14	11:57	Oil plume visible near mouth of tributary on bottom left of photo. Paden City located at approximately river mile 133.5 is visible in the upper left of photo.		
IMG_5773	7/11/14	11:58	Oil plume on the Ohio River. Ohio is located in the bottom left of photo. This area is near river mile 133.		

Photographer Tonya Mather, Timothy Hodge



IMG_0442: Taken 7/11/14 at 05:52. Oil on the Ohio River between the hydroelectric plant and WV shore.



IMG_0444: Taken 7/11/14 at 06:06. Oil plume located downstream of release near handicap fishing area.



IMG_0451: Oil plume downstream of release looking upstream toward Hannibal Lock and Dam.



IMG_5759: Taken 7/11/14 at 11:52. Oil plume visible downstream of release. Hydroelectric plant located in the top right corner of photo. WV is on the right, Ohio is on the left. Hydroelectric plant is located downstream of river mile 126.



IMG_5760: Taken 7/11/14 at 11:52. Visible oil plume downstream of release. Ohio located at the top of the photo, WV is at the bottom. Bridge to Ohio is located near river mile 127.



IMG_5767: Taken 7/11/14 at 11:54. Visible oil plume on Ohio River. WV is located at the top of the photo. The mouth of Fishing Creek is visible in the top center of photo which is located at approximately river mile 128.5.



IMG_5770: Taken 7/11/14 at 11:57. Oil plume visible near mouth of tributary on bottom left of photo.
Paden City located at approximately river mile 133.5 is visible in the upper left of photo.



IMG_5773: Taken 7/11/14 at 11:58. Oil plume on the Ohio River. Ohio is located in the bottom left of photo. This area is near river mile 133.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: City of New Martinsville **Receiving Stream:** Ohio River

Treatment System Design Maximum Flow: N/A **MGD**

Treatment System Actual Average Flow: N/A **MGD** (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#													
			2.a.													
a)	Amount of Pollutant Released	1 to 3	3													
b)	Toxicity of Pollutant	0 to 3	1													
c)	Sensitivity of the Environment	0 to 3	1													
d)	Length of Time	1 to 3	1													
e)	Actual Exposure and Effects thereon	0 to 3	2													
Average Potential for Harm Factor			1.6	No												
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 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.

		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
2.a.	Moderate	Major	\$4,600	1	\$4,600
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					\$4,600

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		\$460
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$0		\$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			\$0
6.2.b.3 - Cooperation with the Secretary		10	(\$460)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$4,630

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: Economic benefit is not warranted.	