



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
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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: Paul Canterbury
Green Acres Subdivision
506 Gardner Loop Road
Princeton, WV 24740

DATE: February 1, 2013

ORDER NO.: 7731

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 Paul Canterbury (hereinafter "Canterbury").

FINDINGS OF FACT

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

1. Canterbury operates a waste water treatment system located at the Green Acres Subdivision in Mercer County, West Virginia. Canterbury was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550901, on October 24, 2010.
2. On June 1, 2010, 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 Canterbury's WV/NPDES permit were observed and documented:
 - a. Section F.1-The Permittee failed to properly operate and maintain the wastewater treatment system. Specifically, treatment ponds were completely covered in duckweed and were not properly functioning. The clarifier surface skimmer and sludge return were not functioning correctly.

- b. Section B-The Permittee failed to submit copies of Discharge Monitoring Reports to the WVDEP Charleston and Oak Hill Regional Offices.
3. On February 9, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Canterbury's WV/NPDES permit were observed and documented:
 - a. Section F.1. and Section F.3.-The Permittee allowed an unpermitted bypass to occur by failing to maintain all systems of treatment and control.
 - b. Section A.3.-The Permittee failed to meet effluent limits for BOD, Ammonia-Nitrogen and Fecal Coliform.
 - c. Section F.1-The Permittee failed to properly operate and maintain the wastewater treatment system. Specifically, treatment pond embankments were severely damaged by animal burrows, the polishing pond was full of solids and had almost no remaining capacity, the uneven clarifier weir allowed for potential short-circuiting of treatment, and chlorination/dechlorination feeders were empty of tablets.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. I-12-28-02/09-MDP-2, I-12-28-02/09-MDP-3 and I-12-28-02/09-MDP-4 were issued to Canterbury.

4. On May 16, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Canterbury's WV/NPDES permit were observed and documented:
 - a. Section F.1. and Section F.3.-The Permittee allowed an unpermitted bypass to occur by failing to maintain all systems of treatment and control.
 - b. Section A.3.-The Permittee failed to meet effluent limits for BOD, Ammonia-Nitrogen and Fecal Coliform.
 - c. Section F.1-The Permittee failed to properly operate and maintain the wastewater treatment system. Specifically, treatment pond embankments were severely damaged by animal burrows, the polishing pond was full of solids and had almost no remaining capacity, the uneven clarifier weir allowed for potential short-circuiting of treatment, and chlorination/dechlorination feeders were empty of tablets.

As a result of the aforementioned violations, NOV Nos. I-12-28-05/16-MDP-1, I-12-28-05/16-MDP-2 and I-12-28-05/16-MDP-3 were issued to Canterbury.

5. On November 14, 2012, WVDEP personnel and Canterbury met to discuss the terms and conditions of this Order.
6. On November 30, 2012, Canterbury submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Canterbury's ability to pay a civil administrative penalty.

7. On January 11, 2013, WVDEP personnel conducted a review of facility records from the time period of 2nd Quarter 2010 through 4th Quarter 2012. During this review, the following violations of the terms and conditions of Canterbury' WV/NPDES permit were observed:
 - a. Section A.3 - Twenty-six (26) exceedances of Canterbury' permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations – nine (9)
 - ii. Moderate violations – nine (9)
 - iii. Major violations – eight (8)
 - b. Section B - The Permittee failed to submit copies of 3rd Quarter 2012 Discharge Monitoring Reports to the WVDEP Charleston and Oak Hill Regional Offices.

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. Canterbury shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within twenty (20) days of the effective date of this Order, Canterbury shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Canterbury will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SE Regional Environmental Enforcement Office
254 Industrial Drive
Oak Hill, WV 25901**

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 Canterbury's permit violations, Canterbury shall be assessed a civil administrative penalty of twenty thousand four hundred thirty dollars (\$20,430) 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 \$1,702.50 due on or before April 1, 2013.

Payment 2 in the amount of \$1,702.50 due on or before May 1, 2013.

Payment 3 in the amount of \$1,702.50 due on or before June 1, 2013.

Payment 4 in the amount of \$1,702.50 due on or before July 1, 2013.

Payment 5 in the amount of \$1,702.50 due on or before August 1, 2013.

Payment 6 in the amount of \$1,702.50 due on or before September 1, 2013.

Payment 7 in the amount of \$1,702.50 due on or before October 1, 2013.

Payment 8 in the amount of \$1,702.50 due on or before November 1, 2013.

Payment 9 in the amount of \$1,702.50 due on or before December 1, 2013.

Payment 10 in the amount of \$1,702.50 due on or before January 1, 2014.

Payment 11 in the amount of \$1,702.50 due on or before February 1, 2014.

Payment 12 in the amount of \$1,702.50 due on or before March 1, 2014.

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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Canterbury 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, Canterbury 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, Canterbury 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 Canterbury 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, Canterbury 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

The undersigned hereby certifies that the above-named person is a resident of the State of New York and is qualified to hold the office of Justice of the Peace in the County of [County Name] and the City of [City Name].

I, the undersigned, do hereby certify that the above-named person is a resident of the State of New York and is qualified to hold the office of Justice of the Peace in the County of [County Name] and the City of [City Name].

Witness my hand and seal of office this [Date] day of [Month], 19[Year].

[Signature]
[Title]
[Address]

NOTICE TO THE PUBLIC

Notice is hereby given that the undersigned has been appointed Justice of the Peace in the County of [County Name] and the City of [City Name].

The undersigned will hold office from the date of his appointment until the expiration of his term of office.

It is the policy of the State of New York to encourage the participation of the people in the government and to provide for the most efficient administration of the courts.

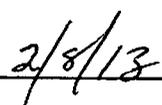
The undersigned is committed to the highest standards of integrity and impartiality in the discharge of his duties.

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 Canterbury 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 Canterbury 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 Canterbury (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 Canterbury 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 Canterbury 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 Canterbury, its successors and assigns.
7. This Order shall terminate upon Canterbury's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

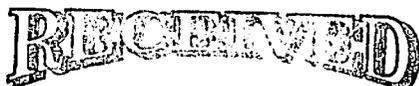


Paul Canterbury



Date

Public Notice begin:



Date

Public Notice end:

FEB 12 2013

ENVIRONMENTAL
ENFORCEMENT

Date

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

Date

Table One:
Canterbury DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - April 2010 - December 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
						-	-	-
June 10	Flow	MGD	0.03	0.038	27%	X	-	-
June 10	BOD	MG/L	5	18	260%	-	X	-
June 10	TSS	MG/L	30	37	23%	X	-	-
June 10	Ammonia-Nitrogen	MG/L	3	8.34	178%	-	X	-
June 10	Fecal Coliform	COL	200	6000	2900%	-	-	X
December 10	Flow	MGD	0.03	0.0346	15%	X	-	-
December 10	Fecal Coliform	COL	200	530	165%	-	X	-
March 11	Fecal Coliform	COL	200	1730	765%	-	-	X
March 11	BOD	MG/L	10	22	120%	-	X	-
March 12	BOD	MG/L	10	163	1530%	-	-	X
June 12	BOD	MG/L	5	15	200%	-	X	-
December 12	BOD	MG/L	10	12	20%	X	-	-
March 12	TSS	MG/L	30	56	87%	-	X	-
June 12	TSS	MG/L	30	40	33%	X	-	-
December 12	Ammonia-Nitrogen	MG/L	6	6.02	0.3%	X	-	-
March 12	Fecal Coliform	COL	200	2700	1250%	-	-	X
June 12	Fecal Coliform	COL	200	1760	780%	-	-	X

Outlet 001 DMR Exceedances - D.O. INSTANTANEOUS. MIN. - April 2010 - December 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
						-	-	-
June 10	D.O.	mg/l	6.0	2.1	650.0%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - April 2010 - December 2012						Degree of non-compliance		
Date	Parameter	Units	Permitted	Reported	% Exceedance	Min	Mod	Maj
			max. daily	max. daily				
June 10	Fecal Coliform	COL	400	6000	1400%	-	-	X
December 10	Fecal Coliform	COL	400	530	33%	X	-	-
March 11	Fecal Coliform	COL	400	1730	333%	-	X	-
March 11	BOD	MG/L	20	22	10%	X	-	-
March 12	BOD	MG/L	20	163	715%	-	-	X
June 12	BOD	MG/L	10	15	50%	X	-	-
March 12	Fecal Coliform	COL	400	2700	575%	-	X	-
June 12	Fecal Coliform	COL	400	1760	340%	-	X	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	9	9	8

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Paul Canterbury

Receiving Stream:

UNT of Christian Fork of Brush
Creek

Treatment System Design Maximum Flow: 0.03 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#												
			3a	3c	4a	4c	7ai	7aii	7aiii						
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1						
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	1						
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1	1						
d)	Length of Time	1 to 3	1	1	2	2	1	1	1						
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1						
Average Potential for Harm Factor			1	1	1.2	1.2	1	1	1	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	2	3	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 $\leq 40\%$ for Avg. Monthly or $\leq 100\%$ for Daily Max., exceed numeric WQ standard by $\leq 100\%$, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by $\geq 41\%$ and $\leq 300\%$ for Avg. Monthly, $\geq 101\%$ and $\leq 600\%$ for Daily Max., exceed numeric WQ standard by $\geq 101\%$ and \leq of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by $\geq 301\%$ for Avg. Monthly, $\geq 601\%$ for Daily Max., exceed numeric WQ standard by $\geq 601\%$, 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		\$2,040
6.2.b.4 - Compliance/noncompliance history	10		\$2,040
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	(\$2,040)
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	(\$2,040)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$20,430

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:	