



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
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Ronald Rankin/RDS, Inc.
1647 New York Avenue
Martinsburg, WV 25401

DATE: June 28, 2012

ORDER NO.: 7582

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 RDS, Inc.

FINDINGS OF FACT

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

1. RDS, Inc. operates Skyline Village waste water treatment plant (WWTP) located near Berkeley Springs, Morgan County, West Virginia. RDS, Inc. was issued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG551400, on September 24, 2010, with an expiration date of September 23, 2015.
2. On August 25, 2009, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the package plant at Skyline Village and observed and documented the following deficiencies:
 - a. Inflow and Infiltration (I&I) problems were known to exist at this facility. The inspector requested that the permittee submit, in writing, an explanation concerning how this facility would be brought into compliance.
 - b. Sludge deposits were observed in the receiving stream. Causing conditions not allowable in waters of the State is a violation of WV Legislative Rule 47CSR2 Section 3.2.

Notice of Violation (NOV) No. W09-33-42-224 was issued to RDS, Inc. for the deficiency.

Promoting a healthy environment.

3. On November 3, 2009, WVDEP personnel conducted an inspection of the package plant at Skyline Village and observed and documented the following deficiencies:
 - a. The inspector did not receive information regarding how this facility would be brought into compliance, as requested in the previous inspection report.
 - b. The receiving stream was not observable due to leaf cover. No improvements had been made to improve I&I problems. This deficiency illustrates a failure to properly operate and maintain the facility and is a violation of RDS, Inc.'s WV/NPDES permit (Section F.1).

NOV No. W09-33-49-224 was issued for the deficiency.

4. On May 6, 2010, WVDEP personnel conducted an inspection of the package plant at Skyline Village and observed and documented the following violations of the terms and conditions of RDS, Inc.'s WV/NPDES permit:
 - a. The sand filters were ponded and emitting a foul odor. Sand filter plumbing was in a state of disrepair. These deficiencies illustrate a failure to properly operate and maintain the facility and are violations of Section F.1.

NOV No. W10-33-48-224 was issued for the deficiency.

- b. Sludge deposits were observed in the receiving stream bed. Causing conditions not allowable in waters of the State is a violation of WV Legislative Rule 47CSR2 Section 3.2.

NOV No. W10-33-47-224 was issued for the deficiency.

- c. The facility failed to meet discharge limitations, which is a violation of Section A.

NOV No. W10-33-49-224 was issued for the deficiency.

5. On February 7, 2011, WVDEP personnel conducted an inspection of the package plant at Skyline Village and observed and documented the following deficiencies:
 - a. Aerated sludge appeared very thin, and it appeared that a bypass had recently occurred. Rags and sludge were observed at the outlet and in the receiving stream bed. The inspector requested that the permittee submit, in writing, an explanation of how this deficiency occurred and a plan concerning what would be done to prevent similar events in the future.
 - b. A blanket of distinctly visible solids was observed on the receiving stream bed. Causing conditions not allowable in waters of the State is a violation of WV Legislative Rule 47CSR2 Section 3.2.

NOV No. W11-33-07-224 was issued for the deficiency.

6. On May 17, 2011, WVDEP personnel conducted an inspection of the package plant at Skyline Village and observed and documented the following deficiencies:

- a. The inspector did not receive information regarding how this facility would be brought into compliance, as requested in the previous inspection report.
- b. The facility appeared to be receiving significant I&I. Five of six sand filters were clogged with sludge and ponded. Effluent appeared cloudy. These deficiencies illustrate a failure to properly operate and maintain the facility and are violations of RDS, Inc.'s WV/NPDES Permit (Section F.1).

NOV No. W11-33-32-224 was issued for the deficiency.

- c. An actively discharging green pipe was observed in the rear corner of the dosing tank. The inspector requested that the permittee explain, in writing, how a spill or bypass occurred at this facility and what would be done to prevent such occurrences in the future. The inspector also requested that the permittee explain the purpose of the aforementioned pipe in the dosing tank, identify the discharge location, and clarify whether the discharge is disinfected before reaching the receiving stream.
- d. The facility failed to meet discharge limitations, which is a violation of RDS, Inc.'s WV/NPDES permit (Section A).

NOV No. W11-33-33-224 was issued for the deficiency.

7. On August 4, 2011, WVDEP personnel conducted an inspection of the package plant at Skyline Village and observed and documented the following deficiencies:

- a. The inspector did not receive information regarding how this facility would be brought into compliance, as requested in the previous inspection report.
- b. Large amounts of very thick sludge were observed on the receiving stream bed. Causing conditions not allowable in waters of the State is a violation of WV Legislative Rule 47CSR2 Section 3.2.

NOV No. W11-33-56-224 was issued for the deficiency.

- c. The facility failed to meet discharge limitations, which is a violation of RDS, Inc.'s WV/NPDES permit (Section A).

NOV No. W11-33-55-224 was issued for the deficiency.

8. WVDEP personnel reviewed Discharge Monitoring Reports (DMRs) submitted for Skyline Village between August 2009 and August 2011. During this review, the following exceedances of RDS, Inc.'s WV/NPDES permit parameters (Section A) were observed (Table One):

- a. Minor violations - 1
- b. Moderate violations - 4
- c. Major violations - 9

9. On June 5, 2012, WVDEP personnel and representatives of RDS, Inc. 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. RDS, Inc. shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of entry of this Order, RDS, Inc. shall submit for approval a proposed Plan of Corrective Action and schedule, outlining action items and completion dates for how and when RDS, Inc. 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
NE Regional Environmental Enforcement Office
HC63 Box 2545
Romney, WV 26757**

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.

2. Because of RDS, Inc.'s permit and WV Legislative Rule violations, RDS, Inc. shall be assessed a civil administrative penalty of thirty thousand five hundred forty dollars (\$30,540) 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 \$2,545 due on or before September 1, 2012.
Payment 2 in the amount of \$2,545 due on or before October 1, 2012.
Payment 3 in the amount of \$2,545 due on or before November 1, 2012.
Payment 4 in the amount of \$2,545 due on or before December 1, 2012.
Payment 5 in the amount of \$2,545 due on or before January 1, 2013.
Payment 6 in the amount of \$2,545 due on or before February 1, 2013.
Payment 7 in the amount of \$2,545 due on or before March 1, 2013.
Payment 8 in the amount of \$2,545 due on or before April 1, 2013.

Payment 9 in the amount of \$2,545 due on or before May 1, 2013.
Payment 10 in the amount of \$2,545 due on or before June 1, 2013.
Payment 11 in the amount of \$2,545 due on or before July 1, 2013.
Payment 12 in the amount of \$2,545 due on or before August 1, 2013.

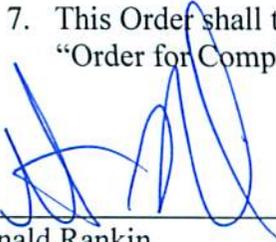
Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

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

OTHER PROVISIONS

1. RDS, Inc. 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, RDS, Inc. 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, RDS, Inc. 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 RDS, Inc. 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, RDS, Inc. shall have the burden of proving that the delay was caused by circumstances beyond his 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 RDS, Inc. 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 RDS, Inc. 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 RDS, Inc. (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 RDS, Inc. 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 RDS, Inc. 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 RDS, Inc., its successors and assigns.
7. This Order shall terminate upon RDS, Inc.'s notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Ronald Rankin
RDS, Inc.

7-3-12

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised January 2011

RECEIVED

JUL 9 - 2012

ENVIRONMENTAL
ENFORCEMENT

Table One:
Ronald Rankin DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 8/09 through 8/11						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
4-19-2010	Fecal Coliform	Cnts/100m	200	7685	3743%	-	-	X
4-19-2011	Ammonia Nitrogen	mg/L	6	10	67%	-	X	-
4-19-2011	Fecal Coliform	Cnts/100m	200	1960	880%	-	-	X
7-19-2011	BOD 5-Day	mg/L	5	15	200%	-	X	-
7-19-2011	Fecal Coliform	Cnts/100m	200	31900	15850%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - 8/09 through 8/11						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
4-19-2010	Fecal Coliform	Cnts/100m	400	24000	5900%	-	-	X
4-19-2011	Fecal Coliform	Cnts/100m	400	4000	900%	-	-	X
7-19-2011	BOD 5-Day	mg/L	10	25	150%	-	X	-
7-19-2011	Fecal Coliform	Cnts/100m	400	60000	14900%	-	-	X

Outlet 001 DMR Exceedances - INSTANTANEOUS. MAX. - 8/09 through 8/11						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
4-19-2010	Fecal Coliform	Cnts/100m	500	24000	4700%	-	-	X
4-19-2011	Fecal Coliform	Cnts/100m	500	4000	700%	-	-	X
7-19-2011	BOD 5-Day	mg/L	12.5	25	100%	X	-	-
7-19-2011	Fecal Coliform	Cnts/100m	500	60000	11900%	-	-	X

Outlet 001 DMR Exceedances - D.O. INSTANTANEOUS. MIN. - 8/09 through 8/11						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
7-19-2011	D.O.	mg/l	6.0	2.7	55.0%	-	X	-

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		1	4	9



1. 8-4-2011 Pipe in question-Dosing Tank



2. 8-4-2011 Receiving stream upstream of Outlet 001



3. 8-4-2011 Receiving stream downstream of Outlet 001



4. 8-4-11 Sludge in receiving stream



5. 8-4-11 Sludge w/ sludge worms in receiving stream

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Ronald Rankin/RDS, Inc.

Receiving Stream:

Swim Run/Sleepy Creek/Potomac River

Treatment System Design Maximum Flow: 0.011 MGD

Treatment System Actual Average Flow: 0.004 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			4a	4b	5b	6b	7b	8b	8c						
a)	Amount of Pollutant Released	1 to 3	1	2	2	1	2	1	1						
b)	Toxicity of Pollutant	0 to 3	0	1	1	0	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	2	2	3	3	3	1	1						
e)	Actual Exposure and Effects thereon	0 to 3	1	2	2	1	2	1	1						
Average Potential for Harm Factor			1	1.6	1.8	1.2	1.8	1	1	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	2	2	2	2	2	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
4a	Minor	Moderate	\$1,500	1	\$1,500
4b	Moderate	Moderate	\$3,600	1	\$3,600
5b	Moderate	Moderate	\$3,800	1	\$3,800
6b	Moderate	Moderate	\$3,200	1	\$3,200
7b	Moderate	Moderate	\$3,800	1	\$3,800
8b	Minor	Moderate	\$1,500	4	\$6,000
8c	Minor	Major	\$2,000	6	\$12,000
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
Total Base Penalty					\$33,900

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		\$3,390
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	(\$3,390)
6.2.b.3 - Cooperation with the Secretary		10	(\$3,390)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$3,360)
Penalty =			\$30,540

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:	