



west virginia department of environmental protection

Division of Water and Waste Management
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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: Everett Rowan
Rowan Mobile Home Park
189 Old Turnpike Road
Sutton, WV 26601

DATE: August 2, 2012

ORDER NO.: 7392

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 Everett Rowan.

FINDINGS OF FACT

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

1. Everett Rowan operates a sewage treatment facility located near Sutton, Braxton County, West Virginia. Everett Rowan was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG551398 on April 4, 2008. Permit coverage was reissued on February 3, 2011.
2. On April 7, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, the following violations of the terms and conditions of Everett Rowan's WV/NPDES permit were observed and documented:
 - a. No dechlorination tablets were present in the dechlorination unit (Section F.1.).
 - b. Aeration system not in proper working condition (Section F.1.).
 - c. Final effluent exceeded the effluent limitations (Section A.3.).
 - d. The operator of this plant does not possess at least a class I-S certificate for wastewater treatment (Section G.3.).

Promoting a healthy environment.

As a result of the aforementioned violations, Notice of Violation No. W-11-08-0407-GCM was issued to Everett Rowan.

3. On June 6, 2011, WVDEP personnel conducted a review of the facility's files from the time period of January 2009-March 2011. During this review, the following violations of the terms and conditions of Everett Rowan's WV/NPDES permit were observed:
 - a. Thirty-two (32) exceedances of Everett Rowan's permit parameters were observed and documented (See Table 1). Each exceedance is a violation of the terms and conditions of Everett Rowan's WV/NPDES permit (Section A.3.). These exceedances can be further defined as:
 - i. Minor violations-7
 - ii. Moderate violations-10
 - iii. Major violations-15
 - b. The permittee has failed to properly submit Discharge Monitoring Reports (DMRs) for all four quarters of 2009, and the 1st quarter of 2010.
4. On August 19, 2011, WVDEP personnel and Everett Rowan met to discuss the terms of this Order.
5. On November 18, 2011, WVDEP personnel and Everett Rowan conducted a follow-up meeting to discuss the terms and conditions of this Order.
6. On February 29, 2012, Everett Rowan submitted revised DMRs to WVDEP personnel, reflecting corrected flow rates. This information was used to determine Everett Rowan's eligibility for a civil administrative penalty reduction based upon average facility discharge.
7. On March 19, 2012, Everett Rowan submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Everett Rowan'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. Everett Rowan shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within twenty (20) days of entry of this Order, Everett Rowan shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Everett Rowan will achieve compliance with all terms and conditions of its WV/NPDES permit and/or pertinent laws and rules. 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 Everett Rowan's permit violations, Everett Rowan shall be assessed a civil administrative penalty of one thousand four hundred forty dollars (\$1,440) 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 \$120 due on or before October 1, 2012.

Payment 2 in the amount of \$120 due on or before November 1, 2012.

Payment 3 in the amount of \$120 due on or before December 1, 2012.

Payment 4 in the amount of \$120 due on or before January 1, 2013.

Payment 5 in the amount of \$120 due on or before February 1, 2013.

Payment 6 in the amount of \$120 due on or before March 1, 2013.

Payment 7 in the amount of \$120 due on or before April 1, 2013.

Payment 8 in the amount of \$120 due on or before May 1, 2013.

Payment 9 in the amount of \$120 due on or before June 1, 2013.

Payment 10 in the amount of \$120 due on or before July 1, 2013.

Payment 11 in the amount of \$120 due on or before August 1, 2013.

Payment 12 in the amount of \$120 due on or before September 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. Everett Rowan 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, Everett Rowan 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, Everett Rowan 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 Everett Rowan 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, Everett Rowan 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 Everett Rowan 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 Everett Rowan 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 Everett Rowan (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 Everett Rowan 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 Everett Rowan 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 Everett Rowan, its successors and assigns.

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

BY: Everett Rowan Farrel Rowan 8-13-12
Everett Rowan Date
Rowan Mobile Home Park

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

revised November 2010

RECEIVED

AUG 14 2012

ENVIRONMENTAL
ENFORCEMENT

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Everett Rowan

Receiving Stream:

unnamed tributary to Buffalo Creek

Treatment System Design Maximum Flow: 0.0086 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	2d	3ai	3aii	3aiii	3b								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	0								
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	0								
d)	Length of Time	1 to 3	1	1	1	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	0								
Average Potential for Harm Factor			1	1	1	1	1	0.4	No							
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	1	1	1	2	3	1								

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.

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		\$4,300
6.2.b.4 - Compliance/noncompliance history	10		\$4,300
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,000		\$1,000
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)		50	(\$21,500)
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	(\$4,300)
6.2.b.3 - Cooperation with the Secretary		10	(\$4,300)
6.2.b.5 - Ability to Pay		49.046	(\$21,090)
Penalty Adjustments			(\$41,560)
Penalty =			\$1,440

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$1,000
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	\$1,000
Comments: 5 quarter sampling=\$1,000.00	

Table 1:
Everett Rowan Exceedances

Outlet 001 DMR Exceedances - AVG. MONTHLY - January 2009 through March 2011						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
2nd Qtr 2010	BOD	mg/l	5.0	70.8	1316%	-	-	X
3rd Qtr 2010	BOD	mg/l	5.0	50	900%	-	-	X
4th Qtr 2010	BOD	mg/l	10.0	79.8	698%	-	-	X
3rd Qtr 2010	TSS	mg/l	30.0	34	13%	X	-	-
4th Qtr 2010	TSS	mg/l	30.0	39	30%	X	-	-
2nd Qtr 2010	Fecal Coliform	cts/100 ml	200.00	8000	3900%	-	-	X
4th Qtr 2010	Fecal Coliform	cts/100 ml	200.00	6000	2900%	-	-	X
2nd Qtr 2010	Ammonia Nitrogen	mg/l	3.00	16.4	447%	-	-	X
3rd Qtr 2010	Ammonia Nitrogen	mg/l	3.00	11.6	287%	-	X	-
4th Qtr 2010	Ammonia Nitrogen	mg/l	6.00	19.3	222%	-	X	-
3rd Qtr 2010	TRC	mg/l	28.00	1730	6079%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - January 2009 through March 2011						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
2nd Qtr 2010	BOD	mg/l	10.00	70.8	608%	-	-	X
3rd Qtr 2010	BOD	mg/l	10.00	50	400%	-	X	-
4th Qtr 2010	BOD	mg/l	20.00	79.8	299%	-	X	-
2nd Qtr 2010	Fecal Coliform	cts/100 ml	400.00	8000	1900%	-	-	X
4th Qtr 2010	Fecal Coliform	cts/100 ml	400.00	6000	1400%	-	-	X
2nd Qtr 2010	Ammonia Nitrogen	mg/l	6.00	16.4	173%	-	X	-
3rd Qtr 2010	Ammonia Nitrogen	mg/l	6.00	11.6	93%	X	-	-
4th Qtr 2010	Ammonia Nitrogen	mg/l	12.00	19.3	61%	X	-	-
3rd Qtr 2010	TRC	ug/l	57.00	1730	2935%	-	-	X

Outlet 001 DMR Exceedances - INSTANTANEOUS. MAX. - January 2009 through March 2011						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
2nd Qtr 2010	BOD	mg/l	12.50	70.8	466%	-	X	-
3rd Qtr 2010	BOD	mg/l	12.50	50	300%	-	X	-
4th Qtr 2010	BOD	mg/l	25.00	79.8	219%	-	X	-
2nd Qtr 2010	Fecal Coliform	cts/100 ml	500.00	8000	1500%	-	-	X
4th Qtr 2010	Fecal Coliform	cts/100 ml	500.00	6000	1100%	-	-	X
2nd Qtr 2010	Ammonia Nitrogen	mg/l	7.50	16.4	119%	-	X	-
3rd Qtr 2010	Ammonia Nitrogen	mg/l	7.50	11.6	55%	X	-	-
4th Qtr 2010	Ammonia Nitrogen	mg/l	15.00	19.3	29%	X	-	-
3rd Qtr 2010	TRC	ug/l	70.00	1730	2371%	-	-	X

Outlet 001 DMR Exceedances - D.O. INSTANTANEOUS. MIN. - January 2009 through March 2011						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
2nd Qtr 2010	D.O.	mg/l	6.0	2.3	61.7%		X	
3rd Qtr 2010	D.O.	mg/l	6.0	5.3	11.7%	X		
4th Qtr 2010	D.O.	mg/l	6.0	0.8	86.7%			X

Outlet 001 Totals					Degree of non-compliance		
					Min	Mod	Maj
					7	10	15