



west virginia department of environmental protection

Division of Water and Waste Management
601 57th 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

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MAR - 1 2013

ENVIRONMENTAL
ENFORCEMENT

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

TO: Salt Rock PSD
c/o H. Wyatt Hanna III
PO Box 8070
South Charleston, WV 25303

DATE: February 15, 2013

ORDER NO.: 7576

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 Salt Rock PSD (hereinafter "Salt Rock").

FINDINGS OF FACT

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

1. Salt Rock operates a 2.5 million gallon per day (MGD) sewage treatment system located in Cabell County, West Virginia. Salt Rock was issued WV/NPDES Water Pollution Control Permit No. WV0084450 on April 29, 2008.
2. On November 21, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted a Compliance Sampling Inspection (CSI) of the facility. During the inspection, violations of the following sections of the terms and conditions of Salt Rock's WV/NPDES permit were observed and documented:
 - a. Appendix A.II.1-The ultraviolet disinfection system was observed switching off during a decant cycle.
 - b. Section A.002-WVDEP personnel sampled the facility's discharge and documented the following exceedances of Salt Rock's WV/NPDES permit parameters:
 - i. The Biochemical Oxygen Demand (BOD) result was 34 mg/l, an exceedance of the permitted maximum daily amount of 20 mg/l.

Promoting a healthy environment.

- ii. The Total Suspended Solids result was 82 mg/l, an exceedance of the permitted maximum daily amount of 60 mg/l.
- iii. The Fecal Coliform result was >60,000 Cnts/100ml, an exceedance of the permitted maximum daily amount of 400 Cnts/100ml.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. CM-EJP-112111-01 and CM-EJP-112111-02 were issued to Salt Rock on December 6, 2011 and January 6, 2012, respectively.

3. On January 19, 2012, WVDEP personnel received a response to NOV No. CM-EJP-112111-01 from Salt Rock which stated the following:
 - a. A faulty sludge transfer pump in sequential batch reactor (SBR) tank number two (2) may have partially caused Ammonia and BOD exceedances. The pump has been replaced, and Salt Rock has reviewed SBR sequences and made necessary adjustments.
 - b. On December 1, 2011, Kappe Associates was on site to assist Salt Rock in determining why the ultraviolet disinfection system was switching off during decant cycles. Kappe Associate's technician determined the cause to be a faulty level sensor, a component designed to protect the system from a flooding event. A faulty ultraviolet intensity (UVI) sensor probe and 15 weak ballasts were also discovered by the technician. Parts for repairs were ordered on December 19, 2011 and were estimated to be received by February 3, 2012.
4. On June 8, 2012, WVDEP personnel and representatives of Salt Rock met to discuss the terms and conditions of this Order.
5. On January 15, 2013, Salt Rock submitted corrected March 2010 and November 2011 Discharge Monitoring Reports (DMRs) to WVDEP personnel.
6. On January 18, 2013, WVDEP personnel conducted a review of facility records from the time period of November 2009 through December 2012. During this review, the following violations of the terms and conditions of Salt Rock's WV/NPDES permit (Section A.002) were observed:
 - a. Forty-one (41) exceedances of Salt Rock's WV/NPDES permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations- sixteen (16)
 - ii. Moderate violations- twenty-three (23)
 - iii. Major violations- two (2)

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. Salt Rock shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of the effective date of this Order, Salt Rock shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Salt Rock 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
Compliance Monitoring
PO Box 662
Teays, WV 25569**

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 Salt Rock's permit violations, Salt Rock shall be assessed a civil administrative penalty of forty-nine thousand thirty dollars (\$49,030) 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 \$8,171.66 due on or before April 1, 2013.

Payment 2 in the amount of \$8,171.66 due on or before May 1, 2013.

Payment 3 in the amount of \$8,171.66 due on or before June 1, 2013.

Payment 4 in the amount of \$8,171.66 due on or before July 1, 2013.

Payment 5 in the amount of \$8,171.66 due on or before August 1, 2013.

Payment 6 in the amount of \$8,171.70 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. Salt Rock 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, Salt Rock 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, Salt Rock 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 Salt Rock 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, Salt Rock 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 Salt Rock 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 Salt Rock 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 Salt Rock (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 Salt Rock 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 Salt Rock 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 Salt Rock, its successors and assigns.

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



H. Wyatt Hanna III
Salt Rock PSD

February 28, 2013

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised September 2011

Table One:
Salt Rock PSD Exceedances

Outlet 002 DMR Exceedances - AVG. MONTHLY - 11/2009 through 12/2012						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
3/2010	BOD	lbs/day	208.5	266.5	28%	X	-	-
3/2010	BOD	mg/l	10	26.2	162%	-	X	-
8/2010	Ammonia	mg/l	2	3.3	65%	-	X	-
9/2010	BOD	mg/l	10	23.5	135%	-	X	-
1/2011	Ammonia	mg/l	2	3.7	85%	-	X	-
5/2011	Ammonia	mg/l	2	2.3	15%	X	-	-
6/2011	Ammonia	mg/l	2	4	100%	-	X	-
7/2011	Fecal Coliform	col./100ml	200	362	81%	-	X	-
7/2011	Ammonia	mg/l	2	5.1	155%	-	X	-
7/2011	Ammonia	lbs/day	41.7	42.5	2%	X	-	-
10/2011	BOD	mg/l	10	24.7	147%	-	X	-
10/2011	BOD	lbs/day	208.5	732.2	251%	-	X	-
10/2011	Ammonia	mg/l	2	5.2	160%	-	X	-
10/2011	Ammonia	lbs/day	41.7	106.9	156%	-	X	-
2/2012	Ammonia	mg/l	2	3.7	85%	-	X	-

Outlet 002 DMR Exceedances - MAX. DAILY - 11/2009 through 12/2012						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
3/2010	BOD	lbs/day	417	1015.9	144%	-	X	-
3/2010	BOD	mg/l	20	100	400%	-	X	-
8/2010	Ammonia	mg/l	4	6.65	66%	X	-	-
8/2010	Ammonia	mg/l	4	9.3	133%	-	X	-
9/2010	BOD	lbs/day	417	448.7	8%	X	-	-
9/2010	BOD	mg/l	20	100	400%	-	X	-
1/2011	Ammonia	mg/l	4	8.1	103%	-	X	-
1/2011	Ammonia	mg/l	4	5.9	48%	X	-	-
2/2011	Fecal Coliform	col/100ml	400	540	35%	X	-	-
2/2011	Ammonia	mg/l	4	5	25%	X	-	-
4/2011	Fecal Coliform	col/100ml	400	1700	325%	-	X	-
4/2011	Fecal Coliform	col/100ml	400	429	7%	X	-	-
5/2011	Ammonia	mg/l	4	5.2	30%	X	-	-
7/2011	Fecal Coliform	col/100ml	400	6670	1568%	-	-	X
7/2011	Fecal Coliform	col/100ml	400	433	8%	X	-	-
7/2011	Ammonia	mg/l	4	13.2	230%	-	X	-
7/2011	Ammonia	mg/l	4	6.4	60%	X	-	-
7/2011	Ammonia	lbs/day	83.4	92.8	11%	X	-	-
9/2011	Fecal Coliform	col/100ml	400	440	10%	X	-	-
10/2011	BOD	mg/l	20	85.8	329%	-	X	-
10/2011	BOD	lbs/day	417	2773.6	565%	-	X	-
10/2011	Ammonia	mg/l	4	13	225%	-	X	-
10/2011	Ammonia	lbs/day	83.4	251.2	201%	-	X	-
11/2011	Fecal Coliform	col/100ml	400	6000	1400%	-	-	X
2/2012	Ammonia	mg/l	4	7.3	83%	X	-	-
6/2012	Total Suspended Solids	mg/l	60	62	3%	X	-	-

Outlet 002 Totals	Degree of non-compliance		
	Min	Mod	Maj
	16	23	2

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Salt Rock PSD

Receiving Stream:

Guyandotte River

Treatment System Design Maximum Flow: 2.5 MGD

Treatment System Actual Average Flow: 1.3 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			2a	2bi	2bii	2biii	6ai	6aii	6aiii						
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	1	1	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	1	1	1	1	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	2	1	1	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	Moderate	\$1,500	1	\$1,500
2bi	Minor	Minor	\$1,000	1	\$1,000
2bii	Minor	Minor	\$1,000	1	\$1,000
2biii	Minor	Major	\$2,000	1	\$2,000
6ai	Minor	Minor	\$1,000	13	\$13,000
6aii	Minor	Moderate	\$1,500	19	\$28,500
6aiii	Minor	Major	\$2,000	1	\$2,000
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
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$49,000

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		\$4,900
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			\$0
6.2.b.3 - Cooperation with the Secretary		10	(\$4,900)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$49,030

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:	

H. Wyatt Hanna III
Attorney at Law

H. Wyatt Hanna, III

WV State Bar No. 1579

P. O. Box 8070 • South Charleston, West Virginia 25303
(304) 744-3150 • Fax (304) 744-3157

February 28, 2013

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MAR - 1 2013

Michael A. Zeto
Chief Inspector
WV Department of Environmental Protection
Environmental Enforcement
601 57th Street SE
Charleston, WV 25304

**ENVIRONMENTAL
ENFORCEMENT**

RE: Consent Order No. 7576
Salt Rock Sewer Public Service District

Dear Mr. Zeto:

As you are aware, I represent Salt Rock Sewer Public Service District, a public utility, which provides sanitary sewer collection and treatment services at or near Ona, Cabell County, West Virginia. The PSD Board, at a meeting held last night, authorized me, as legal counsel for the District, to sign the Second Revised Consent Order No. 7576 dated February 15, 2013. This document is enclosed with this correspondence.

In the event you have any questions or desire to discuss this matter further with me, please do not hesitate to contact my office.

Sincerely,



H. Wyatt Hanna, III

HWHIII/rb
Enclosure

cc: Salt Rock Sewer PSD
Terry Moran, PE
David Simmons - WVDEP