



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
Fax: (304) 926-0488

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
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: Town of Franklin
Attn: The Honorable Bob Horan
PO Box 483
Franklin, WV 26807

DATE: June 23, 2016
ORDER NO.: 8543

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. and Chapter 22, Article 12, Section 1 et seq. to Town of Franklin.

FINDINGS OF FACT

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

1. Town of Franklin operates a waste water treatment plant located in Franklin, Pendleton County, West Virginia. Town of Franklin was reissued WV/NPDES Water Pollution Control Permit No. WV0024970 on February 28, 2011. The WV/NPDES permit was administratively extended until April 30, 2016.
2. On April 1, 2014, 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 Town of Franklin's WV/NPDES permit were observed and documented:
 - a. Section A.001- Exceedances of Town of Franklin's permit parameters were observed and documented.
 - b. Appendix A.IV.1-Town of Franklin failed to report leakage of leachate and other petroleum fluids from garbage trucks at the permitted facility/site.

Promoting a healthy environment.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W14-36-019-TPD and W14-36-020-TPD were issued to the Town of Franklin.

3. On April 7, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Franklin's WV/NPDES permit were observed and documented:
 - a. Section A.001- Exceedances of Town of Franklin's permit parameters were observed and documented.
 - b. Appendix A.IV.1-Town of Franklin failed to report leakage of leachate and other petroleum fluids from garbage trucks at the permitted facility/site.

As a result of the aforementioned violations, NOV Nos. W15-36-040-TPD and W15-36-041-TPD were issued to the Town of Franklin.

4. On January 27, 2016, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Town of Franklin's WV/NPDES permit were observed and documented:
 - a. Section A.001- Exceedances of Town of Franklin's permit parameters were observed and documented.
 - b. Appendix A.IV.1-Town of Franklin failed to report leakage of leachate and other petroleum fluids from garbage trucks at the permitted facility/site.

As a result of the aforementioned violations, NOV Nos. W16-36-006-TPD and W16-36-007-TPD were issued to the Town of Franklin.

5. On February 29, 2016, WVDEP personnel conducted a review of facility records from the time period of February 1, 2014 through January 31, 2016. During this review, the following violations of the terms and conditions of Town of Franklin's WV/NPDES permit were observed:
 - a. Section A.001 - Sixty (60) exceedances of Town of Franklin's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-Thirty-one (31)
 - ii. Moderate violations-Twenty-seven (27)
 - iii. Major violations-Two (2)
 - b. Appendix A.III.2.c- Town of Franklin failed to properly specify the number of samples that exceeded the allowable permit conditions on the submitted discharge monitoring reports. Specifically, Town of Franklin failed to identify Maximum Daily exceedances on fourteen (14) DMRs, as outlined in Table 1.
6. During the aforementioned inspections on April 1, 2014, April 7, 2015, and January 27, 2016, WVDEP personnel observed and documented that Town of Franklin allowed chemical mixtures to flow onto or under the land surface in such a manner that could impact groundwater quality, a violation of WV Legislative Rule 47CSR58 Section 7.1.

7. On May 24, 2016, WVDEP personnel met with a representative from Town of Franklin to discuss the terms and conditions of the Order.
8. On May 25, 2016, Town of Franklin submitted financial records to WVDEP. The information was used to perform an economic analysis which evaluated Town of Franklin's ability to pay a civil administrative penalty.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Town of Franklin shall immediately take all measures to initiate compliance with all pertinent laws and rules and the terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of the effective date of this Order, Town of Franklin shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Town of Franklin will achieve compliance with all pertinent laws and rules and the terms and conditions of its WV/NPDES permit. The plan shall include, but not be limited to, provisions for proper remediation of all existing spills and prevention of such spills in the future. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0024970 and Order No. 8543. The plan of corrective action 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 Town of Franklin's permit violations, Town of Franklin shall be assessed a civil administrative penalty of fifteen thousand dollars (\$15,000) 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 \$1250.00 due on or before September 1, 2016.
Payment 2 in the amount of \$1250.00 due on or before October 1, 2016.
Payment 3 in the amount of \$1250.00 due on or before November 1, 2016.
Payment 4 in the amount of \$1250.00 due on or before December 1, 2016.
Payment 5 in the amount of \$1250.00 due on or before January 1, 2017.
Payment 6 in the amount of \$1250.00 due on or before February 1, 2017.
Payment 7 in the amount of \$1250.00 due on or before March 1, 2017.

Payment 8 in the amount of \$1250.00 due on or before April 1, 2017.
Payment 9 in the amount of \$1250.00 due on or before May 1, 2017.
Payment 10 in the amount of \$1250.00 due on or before June 1, 2017.
Payment 11 in the amount of \$1250.00 due on or before July 1, 2017.
Payment 12 in the amount of \$1250.00 due on or before August 1, 2017.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payments 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. Town of Franklin hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia. Under this Order, Town of Franklin 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, Town of Franklin 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 Town of Franklin 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, Town of Franklin 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 Town of Franklin becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Town of Franklin 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 Town of Franklin 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 Town of Franklin (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 Town of Franklin 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 Town of Franklin 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 Town of Franklin, its successors and assigns.
7. This Order shall terminate upon Town of Franklin's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Bob Horan

Honorable Bob Horan, Mayor
Town of Franklin

6/28/16

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013

RECEIVED

JUL 01 2016

ENVIRONMENTAL
ENFORCEMENT

Table One: Town of Franklin DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 2/1/14 through 1/31/16						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
						-	-	-
2/2014	Suspended Solids, Total	lbs/day	50	217.7	335%	-	-	X
2/2014	Suspended Solids, Total	mg/l	30	90	200%	-	X	-
4/2014	Nitrogen, Ammonia Tota	mg/l	7.2	8.5	18%	X	-	-
9/2014	BOD	mg/l	30	54	80%	-	X	-
10/2014	BOD	mg/l	30	38	27%	X	-	-
12/2014	Nitrogen, Ammonia Tota	lbs/day	12	35.67	197%	-	X	-
12/2014	Nitrogen, Ammonia Tota	mg/l	7.2	18.6	158%	-	X	-
1/2015	Nitrogen, Ammonia Tota	lbs/day	12	22.41	87%	-	X	-
1/2015	Nitrogen, Ammonia Tota	mg/l	7.2	19.2	167%	-	X	-
2/2015	Nitrogen, Ammonia Tota	lbs/day	12	25.07	109%	-	X	-
2/2015	Nitrogen, Ammonia Tota	mg/l	7.2	16.7	132%	-	X	-
3/2015	Nitrogen, Ammonia Tota	lbs/day	12	17.77	48%	-	X	-
3/2015	Nitrogen, Ammonia Tota	mg/l	7.2	7.89	10%	X	-	-
4/2015	Nitrogen, Ammonia Tota	lbs/day	12	29.8	148%	-	X	-
4/2015	Nitrogen, Ammonia Tota	mg/l	7.2	10.2	42%	-	X	-
5/2015	Nitrogen, Ammonia Tota	lbs/day	12	15	25%	X	-	-
5/2015	Nitrogen, Ammonia Tota	mg/l	7.2	15	108%	-	X	-
6/2015	Nitrogen, Ammonia Tota	lbs/day	12	27.78	132%	-	X	-
6/2015	Nitrogen, Ammonia Tota	mg/l	7.2	19.6	172%	-	X	-
7/2015	Nitrogen, Ammonia Tota	lbs/day	12	29.54	146%	-	X	-
7/2015	Nitrogen, Ammonia Tota	mg/l	7.2	15.4	114%	-	X	-
8/2015	Nitrogen, Ammonia Tota	lbs/day	12	23.45	95%	-	X	-
8/2015	Nitrogen, Ammonia Tota	mg/l	7.2	14.8	106%	-	X	-
9/2015	Nitrogen, Ammonia Tota	lbs/day	12	18.41	53%	-	X	-
9/2015	Nitrogen, Ammonia Tota	mg/l	7.2	18.4	156%	-	X	-
10/2015	Nitrogen, Ammonia Tota	mg/l	7.2	14.5	101%	-	X	-
11/2015	Nitrogen, Ammonia Tota	lbs/day	12	17.74	48%	-	X	-
11/2015	Nitrogen, Ammonia Tota	mg/l	7.2	15.2	111%	-	X	-
12/2015	Nitrogen, Ammonia Tota	lbs/day	12	16.11	34%	X	-	-
12/2015	Nitrogen, Ammonia Tota	mg/l	7.2	13.8	92%	-	X	-
1/2016	Nitrogen, Ammonia Tota	lbs/day	12	23.79	98%	-	X	-
1/2016	Nitrogen, Ammonia Tota	mg/l	7.2	12.4	72%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY - 2/1/14 through 1/31/16						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
						-	-	-
2/2014	Suspended Solids, Total	lbs/day	100	217.7	118%	-	X	-
2/2014	Suspended Solids, Total	mg/l	60	90	50%	X	-	-
12/2014	Nitrogen, Ammonia Tota	lbs/day	22	35.67	62%	X	-	-
12/2014	Nitrogen, Ammonia Tota	mg/l	13.2	18.6	41%	X	-	-
1/2015	Nitrogen, Ammonia Tota	lbs/day	22	22.41	2%	X	-	-
1/2015	Nitrogen, Ammonia Tota	mg/l	13.2	19.2	45%	X	-	-
2/2015	Nitrogen, Ammonia Tota	lbs/day	22	25.07	14%	X	-	-
2/2015	Nitrogen, Ammonia Tota	mg/l	13.2	16.7	27%	X	-	-
4/2015	Nitrogen, Ammonia Tota	lbs/day	22	29.8	35%	X	-	-
5/2015	Nitrogen, Ammonia Tota	mg/l	13.2	15	14%	X	-	-
6/2015	Nitrogen, Ammonia Tota	lbs/day	22	17.78	-19%	X	-	-

Table One: Town of Franklin DMR Exceedance Summary

6/2015	Nitrogen, Ammonia Tota	mg/l	13.2	19.6	48%	X	-	-
7/2015	Nitrogen, Ammonia Tota	lbs/day	22	29.54	34%	X	-	-
7/2015	Nitrogen, Ammonia Tota	mg/l	13.2	15.4	17%	X	-	-
8/2015	Nitrogen, Ammonia Tota	lbs/day	22	23.45	7%	X	-	-
8/2015	Nitrogen, Ammonia Tota	mg/l	13.2	14.8	12%	X	-	-
9/2015	Nitrogen, Ammonia Tota	mg/l	13.2	18.4	39%	X	-	-
10/2015	Nitrogen, Ammonia Tota	mg/l	13.2	14.5	10%	X	-	-
11/2015	Nitrogen, Ammonia Tota	mg/l	13.2	15.2	15%	X	-	-
12/2015	Nitrogen, Ammonia Tota	mg/l	13.2	13.8	5%	X	-	-
1/2016	Nitrogen, Ammonia Tota	lbs/day	22	23.79	8%	X	-	-

Outlet 001 Exceedances - Minimum 85% Removal - AVG. MONTHLY - 2/1/14 through 1/31/16						Degree of non-compliance		
Date	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
						2/2014	Suspended Solids	mg/l
2/2014	Suspended Solids	mg/l	85.0	77	9.4%	X	-	-
9/2014	BOD, 5-Day	mg/l	85.0	81	4.7%	X	-	-
10/2014	BOD, 5-Day	mg/l	85.0	83	2.4%	X	-	-
10/2014	Suspended Solids	mg/l	85.0	80	5.9%	X	-	-
4/2015	BOD, 5-Day	mg/l	85.0	71	16.5%	X	-	-
4/2015	Suspended Solids	mg/l	85.0	75	11.8%	X	-	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	31	27	2

Town of Franklin



Petroleum staining on ground below Town garbage truck's fuel tank.



Staining behind the back of the Town's truck.



Leachate staining around garbage truck.



Petroleum stains on gravel near cab of garbage truck.



Staining on ground in front of North Fork Disposal truck.



Vegetation killed by leachate from garbage truck.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Town of Franklin

Receiving Stream:

Treatment System Design Maximum Flow: 0.2 MGD

Treatment System Actual Average Flow: 0.17375 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			2b	3b	4b	5ai	5aii	5aiii	5b						
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1						
b)	Toxicity of Pollutant	0 to 3	0	0	0	1	1	1	0						
c)	Sensitivity of the Environment	0 to 3	0	0	0	1	1	1	0						
d)	Length of Time	1 to 3	1	2	3	1	1	1	1						
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0	1	1	1	0						
Average Potential for Harm Factor			0.4	0.6	0.8	1	1	1	0.4	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	3	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		\$7,850
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	(\$7,850)
6.2.b.3 - Cooperation with the Secretary		10	(\$7,850)
6.2.b.5 - Ability to Pay		70.93	(\$55,680)
Penalty Adjustments			(\$63,500)
Penalty =			\$15,000

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: No economic benefit warranted.	