west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
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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: Town of Marlinton
Honorable Sam Felton, Mayor
709 2nd Ave.
Marlinton, WV 24954

DATE: May 17, 2016

ORDER NO.: 8455

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 Town of Marlinton (hereinafter "Marlinton").

FINDINGS OF FACT

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

1. Marlinton operates a wastewater treatment pond located in Marlinton, Pocahontas County, West Virginia. Marlinton was reissued WV/NPDES Water Pollution Control Permit No. WV0024473 on March 31, 2009.

2. On June 11, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of Marlinton's WV/NPDES permit were observed and documented:

   a. Section A.001 – Exceedances of Marlinton's permit parameters were observed and documented.

   As a result of the aforementioned violations, Notice of Violation (NOV) No. W15-38-070-TPD was issued to Marlinton.

3. On November 19, 2015, WVDEP personnel met with representatives of Marlinton to discuss the terms and conditions of the Order.

4. On February 7, 2016, Marlinton submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Marlinton's ability to pay a civil administrative penalty.

5. On May 13, 2016, WVDEP personnel conducted a review of the facility records from the time period of August 1, 2013 through July 31, 2015. During this review, the following violations of the terms and conditions of Marlinton's WV/NPDES permit were observed:

   a. Section A.001 – Sixty-seven (67) exceedances of Marlinton's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
      i. Minor violations-twenty-seven (27)
      ii. Moderate violations-twenty-three (23)
      iii. Major violations-seventeen (17)

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. Marlinton 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, Marlinton shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Marlinton will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0024473 and Order No. 8455. 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 Marlinton's permit violations, Marlinton shall be assessed a civil administrative penalty of thirty thousand dollars ($30,000) 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 $2,500 due on or before July 1, 2016.
   Payment 2 in the amount of $2,500 due on or before August 1, 2016.
   Payment 3 in the amount of $2,500 due on or before September 1, 2016.
   Payment 4 in the amount of $2,500 due on or before October 1, 2016.
   Payment 5 in the amount of $2,500 due on or before November 1, 2016.
   Payment 6 in the amount of $2,500 due on or before December 1, 2016.
   Payment 7 in the amount of $2,500 due on or before January 1, 2017.
   Payment 8 in the amount of $2,500 due on or before February 1, 2017.
   Payment 9 in the amount of $2,500 due on or before March 1, 2017.
   Payment 10 in the amount of $2,500 due on or before April 1, 2017.
   Payment 11 in the amount of $2,500 due on or before May 1, 2017.
   Payment 12 in the amount of $2,500 due on or before June 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. Marlinton 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, Marlinton 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, Marlinton 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 Marlinton 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, Marlinton 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 Marlinton becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Marlinton 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 Marlinton 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 Marlinton (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 Marlinton 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 Marlinton 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 Marlinton, its successors and assigns.

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

Sam M. Felton, I — June 10, 2016

Honorable Sam Felton, Mayor
Town of Marlinton

Date

Public Notice begin: _____

Date

Public Notice end: _____

Date

_____

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

Date

Table One: Town of Marlinton DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 8/1/2013 through 7/31/15						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
08/31/2013	**TSS- Quantity**	lbs/day	37.53	**106**	182%	-	X	-
08/31/2013	**TSS- Concentration**	mg/l	30	**70**	133%	-	X	-
8/31/2013	**Phosphorus, Total**	mg/l	0.5	**0.79**	58%	-	X	-
09/30/2013	**TSS- Quantity**	lbs/day	37.53	**53.3**	42%	-	X	-
09/30/2013	**TSS- Concentration**	mg/l	30	**31**	3%	X	-	-
9/30/2013	**Phosphorus, Total**	mg/l	0.5	**0.79**	58%	-	X	-
10/31/2013	**BOD, 5-day Quantity**	lbs/day	37.53	**42.4**	13%	X	-	-
10/31/2013	**BOD, 5-day Conc.**	mg/l	30	**40**	33%	X	-	-
10/31/2013	**TSS- Quantity**	lbs/day	37.53	**40.25**	7%	X	-	-
10/31/2013	**TSS- Concentration**	mg/l	30	**38**	27%	X	-	-
10/31/2013	**Phosphorus, Total**	mg/l	0.5	**0.62**	24%	X	-	-
11/30/2013	**BOD, 5-day Quantity**	lbs/day	37.53	**42.3**	13%	X	-	-
11/30/2013	**BOD, 5-day Conc.**	mg/l	30	**34**	13%	X	-	-
03/31/2014	**BOD, 5-day Quantity**	lbs/day	37.53	**62.34**	66%	-	X	-
04/30/2014	**Ammonia Nitrogen**	lbs/day	10.27	**20**	95%	-	X	-
4/30/2014	**Phosphorus, Total**	mg/l	0.5	**0.53**	6%	X	-	-
05/31/2014	**Ammonia Nitrogen**	lbs/day	10.27	**15.8**	54%	-	X	-
07/31/2014	**TSS- Quantity**	lbs/day	37.53	**42.3**	13%	X	-	-
7/31/2014	**Phosphorus, Total**	mg/l	0.5	**1.1**	120%	-	X	-
08/31/2014	**TSS- Quantity**	lbs/day	37.53	**45.95**	22%	X	-	-
08/31/2014	**Fecal Coliform**	cnts/100rr	200	**6000**	2900%	-	-	X
8/31/2014	**Phosphorus, Total**	mg/l	0.5	**0.98**	96%	-	X	-
09/30/2014	**BOD, 5-day Quantity**	lbs/day	37.53	**45.9**	22%	X	-	-
09/30/2014	**BOD, 5-day Conc.**	mg/l	30	**34**	13%	X	-	-
09/30/2014	**TSS- Quantity**	lbs/day	37.53	**77.7**	107%	-	X	-
09/30/2014	**TSS- Concentration**	mg/l	30	**57.5**	92%	-	X	-
10/31/2014	**TSS- Quantity**	lbs/day	37.53	**106.9**	185%	-	X	-
10/31/2014	**Phosphorus, Total**	mg/l	0.5	**0.59**	18%	X	-	-
12/31/2014	**BOD, 5-day Quantity**	lbs/day	37.53	**39.9**	6%	X	-	-
01/31/2015	**BOD, 5-day Quantity**	lbs/day	37.53	**81.23**	116%	-	X	-
01/31/2015	**TSS- Quantity**	lbs/day	37.53	**102**	172%	-	X	-
02/28/2015	**BOD, 5-day Quantity**	lbs/day	37.53	**56.7**	51%	-	X	-
02/28/2015	**TSS- Quantity**	lbs/day	37.53	**56.7**	51%	-	X	-
04/30/2015	**TSS- Quantity**	lbs/day	37.53	**40.14**	7%	X	-	-
04/30/2015	**Ammonia Nitrogen**	lbs/day	10.27	**15.8**	54%	-	X	-
05/31/2015	**Ammonia Nitrogen**	lbs/day	10.27	**15.9**	55%	-	X	-
5/31/2015	**Chlorine, Total Residu:**	ug/l	28	**1300**	4543%	-	-	X
5/31/2015	**Phosphorus, Total**	mg/l	0.5	**0.63**	26%	X	-	-
6/30/2015	**Phosphorus, Total**	mg/l	0.5	**1**	100%	-	X	-
6/30/2015	**Chlorine, Total Residu:**	ug/l	28	**1200**	4186%	-	-	X
7/31/2015	**Chlorine, Total Residu:**	ug/l	28	**700**	2400%	-	-	X
7/31/2015	**Phosphorus, Total**	mg/l	0.5	**0.74**	48%	-	X	-
7/31/2015	**TSS-Quantity**	lbs/day	37.53	**109**	190%	-	X	-
7/31/2015	**TSS-Concentration**	mg/l	30	**32**	7%	X	-	-

Table One: Town of Marlinton DMR Exceedance Summary

Outlet 001 DMR Exceedances - MAX. DAILY - 8/1/2013 through 7/31/15						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
08/31/2013	**TSS- Quantity Max**	lbs/day	75.06	**106**	41%	X	-	-
08/31/2013	**TSS- Concentration M:**	mg/l	60	**70**	17%	X	-	-
7/31/2014	**Phosphorus, Total**	mg/l	1	**1.1**	10%	X	-	-
08/31/2014	**Fecal Coliform**	cnts/100rr	400	**6000**	1400%	-	-	X
09/30/2014	**TSS- Quantity Max**	lbs/day	75.06	**77.7**	4%	X	-	-
10/31/2014	**TSS- Quantity Max**	lbs/day	75.06	**106.9**	42%	X	-	-
01/31/2015	**BOD, 5-day**	lbs/day	75.06	**81.23**	8%	X	-	-
01/31/2015	**TSS- Quantity Max**	lbs/day	75.06	**102**	36%	X	-	-
5/31/2015	**Chlorine, Total Residu:**	ug/l	57	**1300**	2181%	-	-	X
6/30/2015	**Chlorine, Total Residu:**	ug/l	57	**1200**	2005%	-	-	X
7/31/2015	**Chlorine, Total Residu:**	ug/l	57	**700**	1128%	-	-	X
7/31/2015	**TSS- Quantity Max**	lbs/day	75.06	**109**	45%	X	-	-

Outlet 001 Exceedances - Minimum 85% Removal - AVG. MONTHLY - 8/1/2013 through 7/31/15						Degree of non-compliance		
Date	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
08/31/2013	**Suspended Solids**	%	**85.0**	**58.8**	30.8%	X	-	-
09/30/2013	**BOD 5-day**	%	**85.0**	**22**	74.1%	-	-	X
09/30/2013	**Suspended Solids**	%	**85.0**	**18**	78.8%	-	-	X
10/31/2013	**BOD 5-day**	%	**85.0**	**38.8**	54.4%	-	X	-
10/31/2013	**Suspended Solids**	%	**85.0**	**0**	100.0%	-	-	X
11/30/2013	**BOD 5-day**	%	**85.0**	**0**	100.0%	-	-	X
11/30/2013	**Suspended Solids**	%	**85.0**	**0**	100.0%	-	-	X
09/30/2014	**BOD 5-day**	%	**85.0**	**0**	100.0%	-	-	X
09/30/2014	**Suspended Solids**	%	**85.0**	**0**	100.0%	-	-	X
01/31/2015	**BOD 5-day**	%	**85.0**	**17**	80.0%	-	-	X
01/31/2015	**Suspended Solids**	%	**85.0**	**0**	100.0%	-	-	X

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	27	**23**	**17**

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: City of Marlinton **Receiving Stream:** Greenbrier River

Treatment System Design Maximum Flow: 0.2 **MGD**

Treatment System Actual Average Flow: 0.276852174 **MGD** (if known)

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

			FOF#												
1)	**Potential for Harm Factor**	**Factor Range**	**5ai**	**5aii**	**5aiii**										
a)	Amount of Pollutant Released	1 to 3	1	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1	1										
d)	Length of Time	1 to 3	1	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1										
	Average Potential for Harm Factor		1	1	1	No	No	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 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.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

1)	Potential for Harm Factor	Factor Range	FOF#												
a)	Amount of Pollutant Released	1 to 3													
b)	Toxicity of Pollutant	0 to 3													
c)	Sensitivity of the Environment	0 to 3													
d)	Length of Time	1 to 3													
e)	Actual Exposure and Effects thereon	0 to 3													
	Average Potential for Harm Factor		No	No	No	No	No	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3													

		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
5ai	Minor	Minor	$1,000	26	$26,000
5aii	Minor	Moderate	$1,500	22	$33,000
5aiii	Minor	Major	$2,000	8	$16,000
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
Total Base Penalty					$75,000

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 -			$0
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	($7,500)
6.2.b.3 - Cooperation with the Secretary		10	($7,500)
6.2.b.5 - Ability to Pay		40.0395	($30,030)
Penalty Adjustments			**($45,000)**
Penalty =			**$30,000**

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.