



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

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

TO: Summers County Board of Education DATE: July 27, 2011
Vicki Hinerman, Superintendent
116 Main St ORDER NO.: 7225
Hinton, WV 25951

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 Summers County Board of Education (hereinafter "Summers BOE").

FINDINGS OF FACT

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

Jumping Branch Elementary School

1. Summers BOE operates a sewage treatment facility located in Hinton, Summers County, West Virginia. Summers BOE was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG551329 on December 6, 2005, administratively extended to July 13, 2011.
2. On January 20, 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 Summers BOE's WV/NPDES permit were observed and documented:
 - a. Autotimer on the pump was not working at the time of inspection. Water in the facility is largely frozen (Section F.1.).

Promoting a healthy environment.

- b. There are eleven (11) excursions on the discharge monitoring reports in the three quarters of 2010 (Section A.3.).
- c. Plant is not operating properly and needs an immediate evaluation of the problems to achieve compliance (Section F.1.).
- d. Operation of this plant requires a 1-S Wastewater treatment operator license (Section G.3.).

As a result of the aforementioned violations, Notice of Violation No. W-11-45-329-SK was issued to Summers BOE.

3. On March 14, 2011, WVDEP personnel conducted a review of the facility's files from the time period of January 2009-December 2010. During this review, the following violations were observed:
 - a. Twenty (20) exceedances of Summers BOE's permit parameters were observed and documented (See Table 1). Each exceedance is a violation of the terms and conditions of Summers BOE's WV/NPDES permit (Section A.3.). These exceedances can be further defined as:
 - i. Minor violations-8
 - ii. Moderate violations-10
 - iii. Major violations-12
 - b. Permittee failed to submit the required Discharge Monitoring Report (DMR) for the 1st, 2nd, and 3rd quarters of 2009 (Section B.1.).

Talcott Elementary School

4. Summers BOE operates a sewage treatment facility located in Talcott, Summers County, West Virginia. Summers BOE was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG551418 on May 29, 2008, administratively extended to July 13, 2011.
5. On January 20, 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 Summers BOE's WV/NPDES permit were observed and documented:
 - a. There have been four (4) excursions of DO and ammonia nitrogen on the discharge monitoring reports for the first three quarters of 2010 (Section A.3).
 - b. An outlet marker is required by the permit and must be placed at the discharge point (Section E.13.).
 - c. Operation of this plant requires a 1-S Wastewater treatment operator license (Section G.3.).

As a result of the aforementioned violations, Notice of Violation No. W-11-45-418-SK was issued to Summers BOE.

6. On March 14, 2011, WVDEP personnel conducted a review of the facility's files from the time period of January 2009-December 2010. During this review, the following violations were observed:
 - a. Seven (7) exceedances of Summers BOE's permit parameters were observed and documented (See Table 2). Each exceedance is a violation of the terms and conditions of Summers BOE's WV/NPDES permit (Section A.2.). These exceedances can be further defined as:
 - i. Moderate violations-4
 - ii. Major violations-3
 - b. Permittee failed to submit the required Discharge Monitoring Report (DMR) for the 2nd and 3rd quarters of 2009, and 1st quarter of 2010 (Section B.1.).
7. A meeting was held between WVDEP and Summers BOE on April 25, 2011 to discuss the terms 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. Summers BOE shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permits.
2. Within twenty (20) days of entry of this Order, Summers BOE shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Summers BOE will achieve compliance with all terms and conditions of its WV/NPDES permits 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 Summers BOE's permit violations, Summers BOE shall be assessed a civil administrative penalty of thirty-two thousand one hundred eighty dollars (\$32,180) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. 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. Summers BOE 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, Summers BOE 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, Summers BOE 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 Summers BOE 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, Summers BOE 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 Summers BOE 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 Summers BOE 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 Summers BOE (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 Summers BOE 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 Summers BOE 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 Summers BOE, its successors and assigns.
- 7. This Order shall terminate upon Summers BOE's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


Vicki Hinerman
Summers County Board of Education

8/2/11
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

Table 1

Outlet 001 DMR Exceedances - AVG. MONTHLY - January 2009 through December 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
4th qtr 2009	Ammonia Nitrogen	mg/l	6.0	21.7	262%	-	X	-
1st qtr 2010	Ammonia Nitrogen	mg/l	6.0	26.1	335%	-	-	X
1st qtr 2010	Fecal Coliform	cts/100 ml	200.0	655	228%	-	X	-
3rd qtr 2010	BOD	mg/l	5.0	6	20%	X	-	-
3rd qtr 2010	Ammonia Nitrogen	mg/l	3.0	10.8	260%	-	X	-
3rd qtr 2010	Fecal Coliform	cts/100 ml	200.00	3700	1750%	-	-	X
4th qtr 2010	BOD	mg/l	10.00	127	1170%	-	-	X
4th qtr 2010	Ammonia Nitrogen	mg/l	6.00	33.1	452%	-	-	X
4th qtr 2010	Fecal Coliform	cts/100 ml	200.00	6000	2900%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - January 2009 through December 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
4th qtr 2009	Ammonia Nitrogen	mg/l	12.00	21.7	81%	X	-	-
1st qtr 2010	Ammonia Nitrogen	mg/l	12.00	26.1	118%	-	X	-
1st qtr 2010	Fecal Coliform	cts/100 ml	400.00	655	64%	X	-	-
3rd qtr 2010	Ammonia Nitrogen	mg/l	6.00	10.8	80%	X	-	-
3rd qtr 2010	Fecal Coliform	cts/100 ml	400.00	3700	825%	-	-	X
4th qtr 2010	BOD	mg/l	20.00	127	535%	-	X	-
4th qtr 2010	Ammonia Nitrogen	mg/l	12.00	33.1	176%	-	X	-
4th qtr 2010	Fecal Coliform	cts/100 ml	400.00	6000	1400%	-	-	X

Outlet 001 DMR Exceedances - INSTANTANEOUS. MAX. - January 2009 through December 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
4th qtr 2009	Ammonia Nitrogen	mg/l	15.00	21.7	45%	X	-	-
1st qtr 2010	Ammonia Nitrogen	mg/l	15.00	26.1	74%	X	-	-
1st qtr 2010	Fecal Coliform	cts/100 ml	500.00	655	31%	X	-	-
3rd qtr 2010	Ammonia Nitrogen	mg/l	7.50	10.8	44%	X	-	-
3rd qtr 2010	Fecal Coliform	cts/100 ml	500.00	3700	640%	-	-	X
4th qtr 2010	BOD	mg/l	25.00	127	408%	-	X	-
4th qtr 2010	Ammonia Nitrogen	mg/l	15.00	33.1	121%	-	X	-
4th qtr 2010	Fecal Coliform	cts/100 ml	500.00	6000	1100%	-	-	X

Outlet 001 DMR Exceedances - D.O. INSTANTANEOUS. MIN. - January 2009 through December 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
4th qtr 2009	D.O.	mg/l	6.0	3.3	450.0%		X	
1st qtr 2010	D.O.	mg/l	6.0	1.3	783.3%			X
2nd qtr 2010	D.O.	mg/l	6.0	4.4	266.7%		X	
3rd qtr 2010	D.O.	mg/l	6.0	2	666.7%			X
4th qtr 2010	D.O.	mg/l	6.0	1	833.3%			X

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	8	10	12

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Summers Co. BOE

Receiving Stream:

Jumping Branch, Greenbrier River

Treatment System Design Maximum Flow: 0.0012, .0015 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#												
			2.a., 2.c.	2.d.	3.a.i.	3.a.ii.	3.a.iii .	3.b.	5.b.	5.c.	6.a.i.	6.a.ii.	6.b.		
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1		
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	0	1	1	1	1		
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1	0	1	1	1	1		
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1	1		
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	0	1	1	1	1		
Average Potential for Harm Factor			1	1	1	1	1	1	0.4	1	1	1	1	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	1	1	1	2	3	3	1	1	2	3	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.

Table 2

Outlet 001 DMR Exceedances - AVG. MONTHLY - January 2009 through December 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
2nd qtr 2010	Ammonia Nitrogen	mg/l	8.0	42.5	431%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - January 2009 through December 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
2nd qtr 2010	Ammonia Nitrogen	mg/l	16.00	42.5	166%	-	X	-

Outlet 001 DMR Exceedances - INSTANTANEOUS. MAX. - January 2009 through December 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
2nd qtr 2010	Ammonia Nitrogen	mg/l	20.00	42.5	113%	-	X	-

Outlet 001 DMR Exceedances - D.O. INSTANTANEOUS. MIN. - January 2009 through December 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
4th qtr 2009	D.O.	mg/l	6.0	1	833.3%			X
2nd qtr 2010	D.O.	mg/l	6.0	2.8	533.3%		X	
3rd qtr 2010	D.O.	mg/l	6.0	2.8	533.3%		X	
4th qtr 2010	D.O.	mg/l	6.0	1	833.3%			X

Outlet 001 Totals						Degree of non-compliance		
						Min	Mod	Maj
						0	4	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
2.a., 2.c.	Minor	Minor	\$1,000	1	\$1,000
2.d.	Minor	Minor	\$1,000	1	\$1,000
3.a.i.	Minor	Minor	\$1,000	4	\$4,000
3.a.ii.	Minor	Moderate	\$1,500	8	\$12,000
3.a.iii.	Minor	Major	\$2,000	10	\$20,000
3.b.	Minor	Major	\$2,000	3	\$6,000
5.b.	Minor	Minor	\$400	1	\$400
5.c.	Minor	Minor	\$1,000	1	\$1,000
6.a.i.	Minor	Moderate	\$1,500	3	\$4,500
6.a.ii.	Minor	Major	\$2,000	3	\$6,000
6.b.	Minor	Major	\$2,000	3	\$6,000
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					\$61,900

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 -			\$0
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,200		\$1,200
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	(\$30,950)
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			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$29,720)
Penalty =			\$32,180

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$200
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	\$200
Comments: 6 quarter sampling= 6x \$200=approximately \$1200	