



---

west virginia department of environmental protection

---

Division of Water and Waste Management  
601 57<sup>th</sup> 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](http://www.dep.wv.gov)

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

TO: Town of Clay  
ATTN: Honorable Ryan Clifton, Mayor  
P.O. Box 55  
Clay, WV 25043

DATE: August 3, 2015

ORDER NO.: 8202

**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 Clay.

**FINDINGS OF FACT**

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

1. Town of Clay operates a sewage treatment facility located in Clay, Clay County, West Virginia. Town of Clay was reissued WV/NPDES Water Pollution Control Permit No. WV0022055 on March 29, 2012.
2. On July 17, 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 Clay's WV/NPDES permit were observed and documented:
  - a. Section B.1-The Permittee failed to submit a conceptual Inflow/Infiltration (I/I) removal plan to WVDEP by May, 31 2012.
  - b. Section B.1-The Permittee failed to submit a detailed I/I removal plan to WVDEP by March, 31 2013.
  - c. Section C.3-The Permittee failed to have at least a Class II certified operator managing the facility.

Promoting a healthy environment.

- d. Section C.19-The Permittee allowed a discharge from a point other than a permitted outfall. Specifically, the facility's main pump station failed, resulting in the direct discharge of untreated sewage to the Elk River.
- e. Section A.-The Permittee exceeded permitted effluent discharge limitations six (6) times in the past six (6) months.
- f. Appendix A.II.1 - The Permittee failed to at all times properly operate and maintain all facilities and systems of treatment and control. Specifically, north bridge was out of service.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W14-08-0717-2-GCM and W14-08-0717-3-GCM were issued to Town of Clay.

- 3. On January 6, 2015, WVDEP personnel and representatives of Town of Clay met to discuss the terms and conditions of this Order. Subsequent to the meeting, WVDEP personnel determined that Town of Clay hired an operator with the appropriate Class II certification, in accordance with Section C.3 of its WV/NPDES permit.
- 4. On March 26 and May 14, 2015, WVDEP personnel received financial documents from Town of Clay. The provided information was used to perform an economic analysis which evaluated Town of Clay's ability to pay a civil administrative penalty.
- 5. On July 29, 2015, WVDEP personnel conducted a review of facility records from the time period of June, 2012 through June, 2015. During this review, the following violations of the terms and conditions of Town of Clay's WV/NPDES permit were observed:
  - a. Section A – Thirty-six (36) exceedances of Town of Clay's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
    - i. Minor violations-twenty-six (26)
    - ii. Moderate violations-seven (7)
    - iii. Major violations-three (3)

### **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. Town of Clay shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
- 2. Within twenty (20) days of the effective date of this Order, Town of Clay shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Town of Clay will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0022055 and Order No. 8202. 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 57<sup>th</sup> 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 Clay's permit violations, Town of Clay 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 \$1,250 due on or before October 1, 2015.  
Payment 2 in the amount of \$1,250 due on or before November 1, 2015.  
Payment 3 in the amount of \$1,250 due on or before December 1, 2015.  
Payment 4 in the amount of \$1,250 due on or before January 1, 2016.  
Payment 5 in the amount of \$1,250 due on or before February 1, 2016.  
Payment 6 in the amount of \$1,250 due on or before March 1, 2016.  
Payment 7 in the amount of \$1,250 due on or before April 1, 2016.  
Payment 8 in the amount of \$1,250 due on or before May 1, 2016.  
Payment 9 in the amount of \$1,250 due on or before June 1, 2016.  
Payment 10 in the amount of \$1,250 due on or before July 1, 2016.  
Payment 11 in the amount of \$1,250 due on or before August 1, 2016.  
Payment 12 in the amount of \$1,250 due on or before September 1, 2016.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. Town of Clay 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, Town of Clay 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 Clay 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 Clay 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 Clay 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 Clay becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Town of Clay 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 Clay 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 Clay (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 Clay 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 Clay 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 Clay, its successors and assigns.

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

  
The Honorable Beverly Wayling, Mayor  
Town of Clay

9/11/15  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

**RECEIVED**

SEP 14 2015

ENVIRONMENTAL  
ENFORCEMENT

Table One:  
Town of Clay DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 06/2012 through 06/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
07/2012	BOD	mg/l	30	41.6	39%	X	-	-
10/2012	T. Ammonia Nitrogen	mg/l	9.9	10.9	10%	X	-	-
03/2013	T. Suspended Solids	mg/l	30	33.3	11%	X	-	-
05/2013	T. Ammonia Nitrogen	mg/l	9.9	12.6	27%	X	-	-
07/2013	T. Ammonia Nitrogen	mg/l	9.9	12.3	24%	X	-	-
09/2013	T. Ammonia Nitrogen	mg/l	9.9	11.2	13%	X	-	-
10/2013	T. Ammonia Nitrogen	mg/l	9.9	17.6	78%	-	X	-
11/2013	T. Ammonia Nitrogen	mg/l	9.9	16.4	66%	-	X	-
04/2014	BOD	mg/l	30	38	27%	X	-	-
05/2014	Fecal Coliform	Cnts/100m	200	1180	490%	-	-	X
03/2015	T. Ammonia Nitrogen	mg/l	9.9	10.2	3%	X	-	-
11/2014	Fecal Coliform	Cnts/100m	200	260	30%	X	-	-
04/2015	Fecal Coliform	Cnts/100m	200	250	25%	X	-	-

Outlet 001 DMR Exceedances - MAX. DAILY - 06/2012 through 06/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
05/2014	Fecal Coliform	Cnts/100m	400	1180	195%	-	X	-

Outlet 001 DMR Exceedances - pH MAX. DAILY (Min.) - 06/2012 through 06/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
06/2012	pH	S.U.	6.0	5.8	26.7%	X		
07/2014	pH	S.U.	6.0	5.9	13.3%	X		

Outlet 001 Exceedances - Minimum 85% Removal - AVG. MONTHLY - 06/2012 through 06/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
08/2012	Suspended Solids	%	85.0	76.0	10.6%	X	-	-
11/2012	Suspended Solids	%	85.0	81	12%	X	-	-
12/2012	Suspended Solids	%	85.0	67	7%	X	-	-
01/2013	Suspended Solids	%	85.0	62	14%	X	-	-
02/2013	BOD	%	85.0	77	7%	X	-	-
02/2013	Suspended Solids	%	85.0	68	6%	X	-	-
03/2013	BOD	%	85.0	52	28%	X	-	-
03/2013	Suspended Solids	%	85.0	32	56%	-	X	-
07/2013	BOD	%	85.0	80	11%	X	-	-
07/2013	Suspended Solids	%	85.0	69	4%	X	-	-
11/2013	Suspended Solids	%	85.0	83	15%	X	-	-
12/2013	BOD	%	85.0	50	31%	X	-	-
12/2013	Suspended Solids	%	85.0	70	3%	X	-	-
01/2014	Suspended Solids	%	85.0	78	8%	X	-	-
03/2014	BOD	%	85.0	77	7%	X	-	-
03/2014	Suspended Solids	%	85.0	48	34%	-	X	-
04/2014	BOD	%	85.0	37	49%	-	X	-
08/2014	BOD	%	85.0	0.0001	100%	-	-	X
10/2014	BOD	%	85.0	39	46%	-	X	-
8/2014	Suspended Solids	%	85.0	0.0001	100%	-	-	X

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		26	7	3

Town Of Clay  
7/17/14 Inspection



Main pump station overflowing due to pump failure

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Town of Clay Receiving Stream:  

Treatment System Design Maximum Flow: 0.2 MGD

Treatment System Actual Average Flow: 0.1 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			2a	2b	2c	2d	2f	5ai	5aii	5aiii					
a)	Amount of Pollutant Released	1 to 3	1	1	1	2	1	1	1	1					
b)	Toxicity of Pollutant	0 to 3	0	0	1	1	1	1	1	1					
c)	Sensitivity of the Environment	0 to 3	0	0	1	1	1	1	1	1					
d)	Length of Time	1 to 3	1	1	1	3	1	1	1	1					
e)	Actual Exposure and Effects thereon	0 to 3	0	0	1	2	1	1	1	1					
<b>Average Potential for Harm Factor</b>			0.4	0.4	1	1.8	1	1	1	1	No	No	No	No	No
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>													
	Degree of Non-Compliance	1 to 3	3	3	3	3	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	Major	\$1,700	1	\$1,700
2b	Minor	Major	\$1,700	1	\$1,700
2c	Minor	Major	\$2,000	1	\$2,000
2d	Moderate	Major	\$4,800	1	\$4,800
2f	Minor	Major	\$2,000	1	\$2,000
5ai	Minor	Minor	\$1,000	7	\$7,000
5aaii	Minor	Moderate	\$1,500	4	\$6,000
5aaiii	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
<b>Total Base Penalty</b>					<b>\$27,200</b>

## 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		\$2,720
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	(\$2,720)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,720)
6.2.b.5 - Ability to Pay		34.965	(\$9,510)
<b>Penalty Adjustments</b>			<b>(\$12,200)</b>
<b>Penalty =</b>			<b>\$15,000</b>

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	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b> Economic benefit considered but not applied.	