



west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Town of Harman
Attn: Honorable Jerry Teter, Mayor
P. O. Box 125
Harman, WV 26270

DATE: November 23, 2015

ORDER NO.: 8459

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 Harman (hereinafter "Harman").

FINDINGS OF FACT

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

1. Harman operates a wastewater treatment facility located in Harman, Randolph County, West Virginia. Harman was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG551412, on June 13, 2011.
2. On April 4, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following section of Harman's WV/NPDES permit were observed and documented:
 - a. Section B.3- Harman failed to submit Discharge Monitoring Reports (DMRs) within twenty (20) days following the end of the reporting period.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W14-42-025-TPD was issued to Harman.

3. On January 20, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following section of Harman's WV/NPDES permit were observed and documented:

Promoting a healthy environment.

- a. Section B.3-Harman failed to submit DMRs within twenty (20) days following the end of the reporting period.

As a result of the aforementioned violations, NOV No. W15-42-011-TPD was issued to Harman.

4. On July 8, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of Harman's WV/NPDES permit were observed and documented:

- a. Section F.1-Harman failed to properly operate and maintain the facility. Specifically:
 - i. The bar screen was blocked with material.
 - ii. The grinder needed cleaned.
 - iii. The grid cover was off of the influent/grit chamber.
 - iv. The influent area had a buildup of material on the sides.
 - v. Material in the garbage can by the comminutor had algae and plants growing on it and needed to be disposed of properly.
 - vi. There was floating plastic and algae on Tank No. Four (4).
 - vii. There was a black substance covering the concrete at the outlet.
 - viii. Trees and brush inside the fenced area needed to be removed.
- b. Section B.3-Harman failed to submit DMRs within twenty (20) days following the end of the reporting period.

As a result of the aforementioned violations, NOV Nos. W15-42-074-TPD and W15-42-075-TPD were issued to Harman.

5. On September 20, 2015, WVDEP personnel conducted a record review from the time period of the 3rd Quarter of 2013 through the 2nd Quarter of 2015. During the review, WVDEP personnel observed and documented the following violations of Harman's WV/NPDES permit:
 - a. Section B.3 – The following DMRs were not submitted until after the allotted time period of twenty (20) days following the end of the reporting period: the 3rd Quarter of 2013; the 1st, 2nd, 3rd, and 4th Quarters of 2014; and the 1st and 2nd Quarters of 2015.
6. On November 13, 2015, Harman submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Harman's ability to pay a civil administrative penalty.
7. On November 20, 2015, WVDEP personnel conducted a record review and determined that Harman had submitted the 3rd Quarter of 2015 DMRs.

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. Harman 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, Harman shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Harman 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. WV0103110, Registration No. No. WVG551412, and Order No. 8459. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NE Regional Environmental Enforcement Office
22288 Northwestern Pike
Romney, WV 26757-8005**

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 Harman's permit violations, Harman shall be assessed a civil administrative penalty of two thousand five hundred dollars (\$2,500) 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 \$416.66 due on or before January 1, 2016.
Payment 2 in the amount of \$416.66 due on or before February 1, 2016.
Payment 3 in the amount of \$416.66 due on or before March 1, 2016.
Payment 4 in the amount of \$416.66 due on or before April 1, 2016.
Payment 5 in the amount of \$416.66 due on or before May 1, 2016.
Payment 6 in the amount of \$416.70 due on or before June 1, 2016.

Payment 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. Harman 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, Harman 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, Harman 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 Harman 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, Harman 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 Harman becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Harman 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 Harman 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 Harman (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 Harman 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 Harman 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 Harman, its successors and assigns.
7. This Order shall terminate upon Harman's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Jerry Teter
Honorable Jerry Teter, Mayor
Town of Harman

12-02-15
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013

RECEIVED

DEC 07 2015

ENVIRONMENTAL
ENFORCEMENT

Harman WWTP Pictures
Taken by T. Ditty- WVDEP Inspector
07/08/2015



Buildup of material on walls of influent area.



Material & algae buildup on grinder.



Buildup of material on bar screen.



Garbage from bar screen area has not been properly disposed.



Material in this can by grinder exhibits healthy plant growth.



Paper/plastic material in tank four with algae growing.



Concrete at outfall #001 with black material growth.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Town of Harman **Receiving Stream:**

Treatment System Design Maximum Flow: 0.05 MGD

Treatment System Actual Average Flow: 0.023 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			4a	5										
a)	Amount of Pollutant Released	1 to 3	1	1										
b)	Toxicity of Pollutant	0 to 3	1	0										
c)	Sensitivity of the Environment	0 to 3	1	0										
d)	Length of Time	1 to 3	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	0										
Average Potential for Harm Factor			1	0.4	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	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.

		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
4a	Minor	Major	\$2,000	1	\$2,000
5	Minor	Minor	\$400	7	\$2,800
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
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					\$4,800

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		\$480
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	(\$480)
6.2.b.3 - Cooperation with the Secretary		10	(\$480)
6.2.b.5 - Ability to Pay		38.55	(\$1,850)
Penalty Adjustments			(\$2,300)
Penalty =			\$2,500

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.	