



west virginia department of environmental protection

Division of Water and Waste Management
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Charleston, WV 25304
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Austin Caperton, Cabinet Secretary
dep.wv.gov

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

TO: Town of Tunnelton
Attn: Mayor Brian Harris
P.O. Box 396
Tunnelton, WV 26444

DATE: July 23, 2020

ORDER NO.: 9033

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 22-11-1 et seq. to Town of Tunnelton (hereinafter "Tunnelton").

FINDINGS OF FACT

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

1. Tunnelton operates a waste water treatment plant located in Tunnelton, Preston County, West Virginia. Tunnelton was reissued WV/NPDES Water Pollution Control Permit No. WV0105651 on March 15, 2016.
2. On August 9, 2017, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following section of the WV/NPDES permit were observed and documented:
 - a. Section A - Tunnelton exceeded its permit parameters.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W-17-39-57-MJS was issued to Tunnelton.

3. On February 21, 2018, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the WV/NPDES permit were observed and documented:

- a. Section A - Tunnelton exceeded its permit parameters.
- b. Appendix A.II.1 – Tunnelton failed to properly operate and maintain the facility. Specifically, Tunnelton failed to clean a spill at the barscreen and failed to properly store road salt at the treatment plant.

As a result of the aforementioned violations, NOV Nos. 18-39-011-MJS and 18-39-017-MJS were issued to Tunnelton.

4. On April 9, 2019, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following section of the WV/NPDES permit were observed and documented:

- a. Section A - Upon a review of records, WVDEP personnel determined that Tunnelton exceeded its permit parameters.
- b. Section A - WVDEP personnel sampled the effluent during this inspection, and the results revealed a Total Residual Chlorine (TRC) level of 1.6 mg/L, which is a major exceedance of Tunnelton's Maximum Daily Limit of 0.036 mg/L (Table One).

As a result of the aforementioned violations, NOV No. 19-39-053-GRC was issued to Tunnelton.

5. On August 7, 2019, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the WV/NPDES permit and WV Legislative Rules were observed and documented:

- a. Section A – Tunnelton exceeded its permit parameters.
- b. Appendix A.II.1 – Tunnelton failed to properly operate and maintain the facility. Specifically, the outlet marker was worn and illegible, the concrete was cracked and crumbling around the pipes in the contact chamber, and the effluent filter in the contact chamber was clogged and was being bypassed.
- c. 47CSR2 Section 3.2.a – Tunnelton caused conditions not allowable in waters of the State by creating distinctly visible settleable solids in Pringle Run.

As a result of the aforementioned violations, NOV No. W19-39-006-MJA was issued to Tunnelton.

6. On September 19, 2019, WVDEP personnel conducted a review of records from the time period of September 2017 through August 2019. During this review, the following violations of the terms and conditions of Tunnelton's WV/NPDES permit were observed:

- a. Section A – One hundred ten (110) exceedances of Tunnelton's permit parameters were observed and documented (Table Two). These exceedances can be further defined as:

- i. Minor violations-forty (40)
 - ii. Moderate violations-fifty-one (51)
 - iii. Major violations-nineteen (19)
7. On November 7, 2019, WVDEP personnel met with Town of Tunnelton representatives to discuss the terms and conditions of this Order.
8. On January 8, 2020, the Town of Tunnelton submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated the Town of Tunnelton's ability to pay a civil administrative penalty.
9. On April 23, 2020, the Town of Tunnelton submitted the attached proposed Plan of Corrective Action (POCA) which outlined action items and completion dates for how and when the Town of Tunnelton would achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The POCA was subsequently approved by WVDEP.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with West Virginia State Code 22-11-1 et seq., it is hereby agreed between the parties, and ORDERED by the Director:

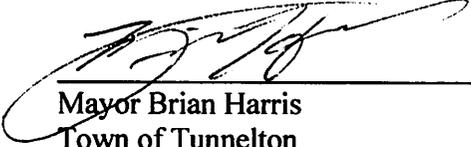
1. Tunnelton shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Upon the effective date of this Order, the aforementioned approved POCA, dated April 23, 2020, shall be incorporated into and become part of this Order. Failure to adhere to the approved POCA and schedule is a violation of this Order.
3. Because of Tunnelton's permit violations, Tunnelton shall be assessed a civil administrative penalty of five thousand five hundred twenty dollars (\$5,520) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. 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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Tunnelton hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21. Under this Order, Tunnelton 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, Tunnelton 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 Tunnelton 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, Tunnelton 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 Tunnelton becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Tunnelton 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 Tunnelton 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 Tunnelton (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 Tunnelton 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 Tunnelton 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 Tunnelton, its successors and assigns.

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



Mayor Brian Harris
Town of Tunnelton

8/4/2020

Date

Public Notice begin:

Date

Public Notice end:

Date

Katheryn Emery, P.E., Acting Director
Division of Water and Waste Management

Date