



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
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: Southern Jackson County PSD
Tim Bailey
PO Box 57
Kenna, WV 25248

DATE: July 2, 2019

ORDER NO.: 8869

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 Southern Jackson County PSD (hereinafter “Southern Jackson”).

FINDINGS OF FACT

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

1. Southern Jackson operates a wastewater collection and treatment system located in Kenna, Jackson County, West Virginia. Southern Jackson was reissued WV/NPDES Water Pollution Control Permit No. WV0084468 on March 19, 2008 and October 18, 2016.
2. On April 15, 2010, West Virginia Department of Environmental Protection (WVDEP) and Southern Jackson entered into Order No. 6976. The Order was issued in response to Southern Jackson’s numerous exceedances of permitted effluent and Discharge Load Allocation (DLA) limitations. The Order provided for stipulated penalties should Southern Jackson fail to complete certain tasks by designated deadlines and/or fail to achieve compliance with certain effluent limitations.
3. On September 16, 2016, WVDEP issued correspondence requiring payment of stipulated penalties in the amount of two hundred seventy-one thousand four hundred dollars

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(\$271,400). These penalties had accrued due to Southern Jackson's failure to comply with Order No. 6976, as follows:

- a. Southern Jackson failed to upgrade the existing wastewater treatment plant in accordance with the compliance schedule outlined in Attachment A of the Order, as required by Order for Compliance No. Four (4). Non-compliance with this requirement over a period of 1,076 days (from the time period of September 20, 2013 through August 31, 2016) resulted in a stipulated penalty of two hundred fifteen thousand two hundred dollars (\$215,200).
 - b. Southern Jackson failed to submit semi-annual compliance reports, as required by Order for Compliance No. Five (5). From the time period of April 15, 2010 through August 31, 2016, ten (10) reports were not submitted, resulting in a stipulated penalty of two thousand dollars (\$2,000).
 - c. Southern Jackson violated interim effluent limitations at Outlet No. 001, as outlined in Order For Compliance No. Six (6). From the time period of April 15, 2010 through September 20, 2013, there were forty-seven (47) exceedances of interim effluent limitations, resulting in a stipulated penalty of nine thousand four hundred dollars (\$9,400).
 - d. Southern Jackson violated permitted effluent limitations at Outlet No. 001. From the time period of April 15, 2010 through August 31, 2016, there were one hundred forty-six (146) exceedances of effluent limitations, resulting in a stipulated penalty of twenty-nine thousand two hundred dollars (\$29,200).
 - e. Southern Jackson violated DLAs at Outlet No. 001, as described in Finding of Fact No. Six (6) of the Order. From the time period of September 21, 2013 through August 31, 2016, there were seventy-eight (78) exceedances of DLAs, resulting in a stipulated penalty of fifteen thousand six hundred dollars (\$15,600).
4. On January 31 and March 15, 2017, WVDEP personnel and representatives of Southern Jackson met to discuss the aforementioned violations of Order No. 6976. During the meetings, it was agreed that further assessment of stipulated penalties would be delayed in consideration of ongoing discussions regarding the possibility of transporting Southern Jackson's flow to the City of Ripley.
 5. On May 10, 2018, in correspondence to WVDEP personnel, Southern Jackson proposed milestones and a schedule for attaining compliance with Order No. 6976. Proposed alternatives for attaining compliance included: upgrade of the existing wastewater treatment facility; replacement of the existing wastewater treatment facility; relocation of the wastewater treatment facility discharge to Tug Fork or Mill Creek; and/or transport of all flow to the City of Ripley. The correspondence stated that a Preliminary Engineering Report would be completed by August 31, 2018, and it would be the basis for determining the most viable alternative for attaining compliance. The milestone schedule reflected that construction for the project chosen by Southern Jackson would be completed by June 30, 2022.
 6. On May 18, 2018, WVDEP approved Southern Jackson's request for a new service connection from a development consisting of a forty-seven (47) unit mobile home park referred to as "Trademark Terrace." The approval was granted contingent upon several requirements, including Southern Jackson's adherence to the milestones included in the aforementioned May 10, 2018 correspondence.

7. On June 22, 2018, a representative of Southern Jackson requested that WVDEP provide interim effluent limitations that coincide with the proposed schedule of milestones included in the aforementioned May 10, 2018 correspondence. The correspondence also requested provisions for payment of the stipulated penalties that were included in the aforementioned September 16, 2016 letter.
8. On March 8, 2019, in e-mail correspondence to WVDEP personnel, Southern Jackson requested that the aforementioned milestone schedule for the upgrade of the existing wastewater treatment facility be extended by ninety (90) days due to a delay in receiving project approval from the West Virginia Infrastructure and Jobs Development Council (IJDC).
9. On June 14, 2019, Southern Jackson submitted an approvable Supplemental Environmental Project (SEP) plan and schedule (attached). The SEP consists of a project to extend sewer service to Meadowview Mobile Home Park, which is an environmentally beneficial plan that will be undertaken by Southern Jackson to offset a portion of the penalty assessed in this Order. The proposal also reflected the updated schedule for completion of the upgrade of Southern Jackson's existing wastewater treatment facility (IJDC Project No. 2108S-1767). Construction related to both the SEP and the wastewater treatment facility upgrade is scheduled to be completed by September 30, 2022.
10. WVDEP personnel conducted a record review and documented numerous Discharge Monitoring Report (DMR) exceedances, reflecting that Southern Jackson remains unable to achieve compliance with its permit limits.

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. Southern Jackson 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, Southern Jackson shall be placed on the following alternate interim limits until the expiration date of September 30, 2022. All other parameter limits contained within its WV/NPDES permit shall remain in full force and effect. Beginning October 1, 2022, Southern Jackson shall achieve compliance with all limits as detailed within the WV/NPDES permit.

Parameter	Interim Average Monthly Limit	Interim Max Daily Limit	Interim Instant. Min. Limit
BOD, 5-Day 20 Deg. C (mg/L) (winter and summer)	Report Only	30 mg/l	N/A
Ammonia Nitrogen (mg/L) (summer)	Report Only	4 mg/L	N/A
Ammonia Nitrogen (mg/L) (winter)	Report Only	30 mg/L	N/A
BOD, 5-Day 20 Deg. C (lbs/day) (summer and winter)	Report Only	Report Only	N/A
Ammonia Nitrogen (lbs/day) (summer and winter)	Report Only	Report Only	N/A
Total Suspended Solids (lbs/day)	Report Only	Report Only	N/A
Dissolved Oxygen (mg/L)	N/A	N/A	6.0 mg/L
BOD % Removal	70% Minimum	N/A	N/A
Suspended Solids % Removal	70% Minimum	N/A	N/A
Total Recoverable Copper (mg/L)	Report Only	0.02mg/L	N/A

3. Upon the effective date of this Order, Southern Jackson agrees to the following stipulated penalties for each future violation of the interim limits provided herein and the WV/NPDES permit limits for all additional parameters for which interim limits are not provided. Penalties shall be paid automatically, without demand, to WVDEP for deposit in the Water Quality Management Fund within ten (10) days of reporting of violations of daily maximum and/or monthly average values on its discharge monitoring reports. Stipulated penalties shall continue until September 30, 2022.

Stipulated Penalties

Total No. Daily Max Violations	Minor ($\leq 100\%$ exceedance)	Moderate (101-600% exceedance)	Major ($> 600\%$ exceedance)
1 thru 10	\$1000	\$1500	\$2000
11 thru 20	\$1250	\$1750	\$2250
21 and greater	\$1500	\$2000	\$2500

Total No. Monthly Avg Violations	Minor ($\leq 40\%$ exceedance)	Moderate (41-300% exceedance)	Major ($> 300\%$ exceedance)
1 thru 5	\$2000	\$3000	\$4000
6 thru 10	\$2500	\$3500	\$4500
11 and greater	\$3000	\$4000	\$5000

4. Upon the effective date of this Order, the updated milestone schedule for the WWTP upgrade (attached), as requested in the aforementioned March 8, 2019 e-mail correspondence, shall be incorporated into and become part of this Order. Failure to adhere to any of the milestones in the approved schedule is a violation of this Order.

5. Upon the effective date of this Order, the schedule of SEP project milestones included in the aforementioned June 14, 2019 correspondence shall be incorporated into and become part of this Order. Failure to adhere to any of the milestones in the approved schedule is a violation of this Order.
6. Within thirty (30) days after completion of the SEP, Southern Jackson shall submit an SEP Completion Report, listing expenditures and detailing all actions performed in regard to the SEP. Failure to complete the SEP in accordance with the June 14, 2019 approved plan and schedule is a violation of this Order, and Southern Jackson shall be required to pay the penalties stipulated in Order for Compliance No. Seven (7).
7. Because of Southern Jackson's violations of Order No. 6976, Southern Jackson shall be assessed a total stipulated penalty, in the amount of two hundred seventy-one thousand four hundred dollars (\$271,400), as outlined in the aforementioned September 16, 2016 correspondence. The stipulated penalty shall be paid as follows:

Fifty-four thousand two hundred eighty dollars (\$54,280) of the stipulated penalty shall be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund, in accordance with the following forty-eight (48) month payment schedule: One thousand one hundred thirty dollars and eighty-three cents (\$1,130.83) shall be submitted within thirty (30) days after the effective date of this Order and by the first day of each month thereafter for the next forty-six (46) months. One thousand one hundred thirty dollars and ninety-nine cents (\$1,130.99) shall be submitted by the first day of the final month.

The remaining two hundred seventeen thousand one hundred twenty dollars (\$217,120) shall be applied to the aforementioned approved SEP, dated June 14, 2019. In the event that the SEP is not completed as approved, the entire value placed upon the SEP shall become due and payable upon demand by WVDEP.

Payments made pursuant to this Order 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

8. Upon the effective date of this Order, Order No. 6976 shall be terminated.

OTHER PROVISIONS

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

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



Tim Bailey
Southern Jackson County PSD

7/9/19

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

Southern Jackson County PSD – Milestone Schedule for WWTP Upgrade

Complete Preliminary Engineering Report	December 2018
Complete Facility Plan and Submit to WVDEP	April 2019
Complete Design – Submit to DEP	September 2019
File with PSC for Certificate of Convenience & Necessity	October 2019
DEP approval of Design	December 2019
Obtain PSC Approval	May 2020
Open Bids	August 2020
Start Construction	December 2020
Complete Construction	September 2022



June 14, 2019

Ms. Laura McGee
West Virginia Department of Environmental Protection
Environmental Enforcement
601 57th Street SE
Charleston, West Virginia 25304


**Re: Southern Jackson County PSD
WWTP Improvements Project (SRF# C-544246)
SEP Document**

Dear Ms. McGee,

Enclosed, please find one (1) original copy of the SEP document you requested for the Southern Jackson County PSD WWTP Upgrade and Meadowview Mobile Home Park Sewer Service Extension Project. This was approved and executed at the PSD's regular meeting on June 13.

Should you have any questions or comments, please do not hesitate to contact Greg Belcher or myself at 304-727-5501. Or, you can email me at bbragg@chapttech.com. Thank you.

CHAPMAN TECHNICAL GROUP


Bob Bragg, P.E.
Project Engineer

Cc: Karl Vielhaber, General Manager, SJCPD (letter only)
File

Enclosure

200 Sixth Avenue
Saint Albans, WV 25177

304.727.5501
304.727.5580 Fax

Buckhannon, WV
Lexington, KY

www.chapttech.com

Southern Jackson County PSD

Supplemental Environmental Proposal

6-13-2019

Introduction

The following is a summary of the key points of the construction project for extending sanitary sewer service to the Meadowview Mobile Home Park located in Fairplain, WV. This extension would be part of the Wastewater Treatment Plant Improvements Project currently being undertaken by the Southern Jackson County Public Service District.

Project Description

The Meadowview Mobile Home Park (MMHP) is currently permitted with the WV DEP under Permit WVG550237 to treat and discharge domestic sanitary waste from 46 mobile homes. The lagoon treatment plant currently utilized by the MMHP has not been able to consistently meet the requirements of its NPDES permit. In an effort to mediate a pending Consent Order with the WVDEP, and as part of a wastewater treatment plant improvements project being planned by the Southern Jackson Co. PSD (SJCPSD), the SJCPSD would have their collection system extended to accept the sanitary flow from the MMHP for treatment at the soon-to-be upgraded SJCPSD plant. The service extension project would consist of approximately 2,135' of variable grade PVC sewer pipe including 300' of 16" steel casing pipe bored and jacked under Interstate I-77. The project would also include installing four (4) 5,000 gallon septic tanks at the end of the park's existing collection system lines. The lines coming out of the septic tanks would empty into a common header and after running under I-77 they would connect to the PSD's existing collection system. This project would also include the decommissioning the MMHP's existing lagoon treatment plant.

Need for the Project

Due to the imposition of more stringent discharge limitations, the MMHP has been unable to consistently meet the discharge parameters within their NPDES permit. The upgrades to the SJCPSD treatment plant will allow the MMHP to terminate its current NPDES permit by sending its sewage flow to the upgraded SJCPSD facility.

Environmental Benefits

The project would benefit the entire community by eliminating a discharge to the receiving stream and the decommissioning of the lagoon treatment plant at the MMHP, all resulting in environmental benefits. Also, as a result of installing four septic tanks outside of the mobile

home park property, the PSD would assume responsibility of operating and maintaining these tanks on a regular basis and as recommended by the tank manufacturer, thereby minimizing the chances for unexpected discharges.

Project Milestones


The following is a revised schedule of compliance with the WVDEP Consent Decree:


Complete Preliminary Engineering Report	December 2018
Complete Facility Plan and Submit to WVDEP	April 2019
Complete Design – Submit to DEP	September 2019
File with PSC for Certificate of Convenience & Necessity	October 2019
DEP approval of Design	December 2019
Obtain PSC Approval	May 2020
Open Bids	August 2020
Start Construction	December 2020
Complete Construction	September 2022

Opinion of Probable Construction Costs

A probable opinion of construction costs for the service extension to the MMHP is \$800,000. This estimate includes reclaiming the existing treatment lagoons and the installation of the four septic tanks and support pads. The effluent of these four tanks would then empty into a new 8-inch collection system line which would go under I-77 and connect to the SJCPSD existing system.

This summary is accepted and approved by the members of the Southern Jackson County Public Service District, 6/13/2019:

By: 
Tim Bailey, Chairman


Leonard Kessell, Member


James L. Stover, P.E., Member