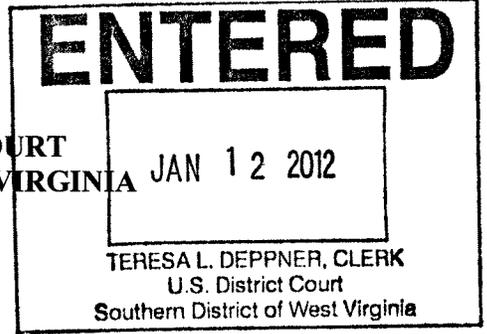


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA



UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

TOWN OF FORT GAY,

Defendant.

Civ. No. 3:09-0855

CONSENT DECREE

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I. BACKGROUND

WHEREAS, Fort Gay is a municipality located in Wayne County, West Virginia, and is organized and exists under the laws of the State of West Virginia. Fort Gay owns, operates, and maintains a publicly owned treatment works (“POTW”) which includes a treatment plant, known as the Fort Gay Wastewater Treatment Plant (“WWTP”), and a collection system (“Collection System”) which collects wastewater from residential, commercial and industrial sources for the purpose of transporting that wastewater to the WWTP. The WWTP is authorized to discharge pollutants in accordance with Fort Gay’s NPDES Permit No. WV0085359 into the Big Sandy River, a tributary of the Ohio River;

WHEREAS, Fort Gay owns, operates, and maintains a drinking water treatment system, known as the Fort Gay Water Works (“FGWW”), which draws raw water from an intake along the Tug Fork River and treats and supplies drinking water to approximately 860 customer accounts;

WHEREAS, the Parties filed a Consent Order of Preliminary Injunction in this matter which was entered by the Court on September 21, 2009;

WHEREAS, Plaintiffs contend that the Town of Fort Gay has not complied with the Consent Order of Preliminary Injunction;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable and in the public interest.

NOW THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section II, below, and with the consent of the Parties, it is hereby ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; Sections 309(b) and 504(a) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(b) and 1364(a); and Sections 1414 and 1431(a) of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. §§ 300g-3, 300i(a). This Court has supplemental jurisdiction over the State law claims asserted by the State of West Virginia pursuant to 28 U.S.C. § 1367. This Court also has personal jurisdiction over Fort Gay.

2. Venue lies in this District pursuant to 28 U.S.C. §§ 1391(b) and 1395(a), Sections 309 (b) and (e) and 504(a) of the CWA, 33 U.S.C. §§ 1319(b) and (e), 1364(a); and Sections 1414(b) and (g)(3)(C) and 1431(a) of the SDWA, 42 U.S.C. §§ 300g-3(b) and (g)(3)(c), 300i(a), because it is the judicial district where Defendant is located, where a substantial part of the events or omissions giving rise to the claim occurred, and where the alleged violations occurred.

3. For purposes of this Consent Decree, or any actions to enforce this Decree, Fort Gay consents to the Court’s jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

4. For purposes of this Consent Decree, Fort Gay agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309 and 504 of the CWA, 33 U.S.C. §§ 1319, 1364, Sections 1414 and 1431 of the SDWA, 42 U.S.C. §§ 300g-3, 300i, and Section 22 of the West Virginia Water Pollution Control Act (“WPCA”), W.Va. Code § 22-11-22, and Chapter 16, Article 1, Section 9a of the West Virginia Code, W. Va. Code § 16-1-9a.

III. APPLICABILITY

5. The obligations of this Consent Decree apply to and are binding upon the United States, the State of West Virginia and Fort Gay, and upon Fort Gay’s successors, assigns, and other entities or persons otherwise bound by law.

6. No transfer of ownership or operation of the Facilities, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Fort Gay of its obligation to ensure that the terms of this Consent Decree are implemented. At least thirty (30) Days prior to such transfer, Fort Gay shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 3, the United States Attorney for the Southern District of West Virginia, and the United States Department of Justice, in accordance with Section IX of this Decree (Notices). Any attempt to transfer ownership or operation of the Facilities without complying with this Paragraph constitutes a violation of this Consent Decree.

7. Fort Gay shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Fort Gay shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

IV. PURPOSE

8. The purpose of the Parties entering into this Consent Decree is to ensure that Fort Gay undertakes measures necessary to comply with the CWA, SDWA, West Virginia Water Pollution Control Act (“WPCA”), Chapter 16, Article 1, Section 9a of the West Virginia Code and the regulations promulgated thereunder, with the goal of eliminating SSOs. The obligations in this Consent Decree, or resulting from the activities required by this Consent Decree, have the objective of causing Fort Gay to achieve and thereafter maintain, full compliance with the terms and conditions of its NPDES Permit, the CWA, SDWA and West Virginia Law as these terms are defined in Section V (Definitions) of this Consent Decree.

V. DEFINITIONS

9. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined by the CWA, SDWA, WPCA, Chapter 16, Article 1, Section 9a of the West Virginia Code, and the regulations promulgated thereunder, or by Fort Gay's NPDES Permit, shall have the meanings ascribed to them therein. Whenever the terms set forth below are used in this Decree, the following definitions shall apply:

a. "Building/Private Property Backup" shall mean a Sanitary Sewer Overflow in the form of wastewater release or backup into a building or onto private property that is caused by blockages, flow conditions, or other malfunctions in the Collection System. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a Private Lateral is not a Building/Private Property Backup for purposes of this Decree.

b. "Collection System" shall mean the wastewater collection and conveyance system (including all pipes, force mains, overflow structures, regulators, pump stations, manholes and components thereto) owned and operated by Fort Gay that collects and conveys wastewater to the WWTP. The Fort Gay Collection System generally consists of approximately 1.5 miles of gravity sewers, approximately 3 miles of force mains, 10 pump stations, and 1 lift station located at the WWTP.

c. "Complaint" shall mean the complaint filed by the Plaintiffs in this action.

d. "Consent Decree" or "Decree" shall mean this Consent Decree and all Appendices attached hereto and all plans, schedules, reports, memoranda, or other submittals approved by EPA or the State pursuant to the requirements of this Decree or any Appendices hereto. In the event of a conflict between the Decree and any Appendix, this Decree shall control.

e. “Date of Lodging” shall mean the date on which the United States and the State of West Virginia file this Consent Decree, with the United States District Court for the Southern District of West Virginia.

f. “Day” or “Days” shall mean a calendar day or calendar days. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

g. “Discharge” shall mean any “discharge of a pollutant” as defined in 40 C.F.R. § 122.2, and/or any “discharge” as defined in W. Va. Code St. R. § 42-10-2.13.

h. “Discharge Monitoring Report” or “DMR” shall mean any discharge monitoring report that Fort Gay is required to submit to WVDEP on a monthly basis pursuant to Fort Gay’s NPDES Permit or applicable State law.

i. “Effective Date” shall mean the date of entry of this Consent Decree by the Court after satisfaction of the public notice and comment procedures of 28 C.F.R. § 50.7.

j. “Effluent Limit” shall mean a numerical or narrative effluent limit imposed by the NPDES Permit.

k. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

l. “Facilities” shall mean Fort Gay’s WWTP and Collection System and the Fort Gay Water Works. A map of the Facilities is attached hereto at Appendix A.

m. “Fort Gay” or “Town” shall mean the incorporated municipality located in Wayne County, West Virginia.

n. “Fort Gay Water Works” or “FGWW” or “Water Works” shall mean the drinking water treatment plant owned and operated by the Town of Fort Gay, including the treatment, storage, and distribution systems.

o. “Infiltration” shall mean water entering the Collection System and service connections from the ground through means that include, but are not limited to, defective pipes and sewer walls, pipe and sewer joints, connections, and manhole walls.

p. “Inflow” shall mean water introduced into the Collection System from sources including, but not limited to, roof leaders, cellars, basement sump pumps, area drains in yards and driveways, foundation drains, cooling water discharges, drains from springs and swampy areas, cracked or broken manhole covers, cross connections from separate storm sewers, catch basins, storm water, surface run-off, and street wash waters.

q. “I/I” shall mean the total quantity of water from Infiltration and/or Inflow without distinguishing the source.

r. “NPDES Permit” shall mean National Pollutant Discharge Elimination System Permit No. WV0085359 issued to the Town of Fort Gay by the WVDEP for the WWTP and Collection System. The term shall include any future, modified, extended or reissued permit. A copy of the NPDES permit is attached to this Consent Decree in Appendix B (NPDES Permit).

s. “Outfall” followed by an Arabic numeral shall mean the outfall assigned to that numerical outfall designation in the NPDES Permit.

t. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

u. “Parties” shall mean the United States, the State of West Virginia and the Town of Fort Gay.

v. “Plaintiffs” shall mean the United States and the State of West Virginia.

w. “Private Lateral” shall mean that portion of the Wastewater Collection and Transmission System, not owned by the City, used to convey wastewater from a building or buildings to that portion of the Wastewater Collection and Transmission System owned by the City.

x. “Pumping Station” shall mean a facility comprised of one or more pumps that lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that Pumping Station.

y. “Quarterly” shall mean each calendar year quarter.

z. “Sanitary Sewer Overflow” or “SSO” shall mean any unpermitted spill, release or discharge from any portion of the Fort Gay Collection System. This term shall include (i) discharges to waters of the State or United States from the Collection System, and (ii) any release of wastewater from the Collection System to public or private property that does not reach waters of the United States or the State, including Building/Private Property Backups.

aa. “Quarterly Progress Report” shall mean the written status report that Fort Gay shall submit on its progress implementing the Consent Decree for quarterly review each year.

bb. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral, unless the Consent Decree states that the “Section” referred to is a Section of the Clean Water Act, Safe Drinking Water Act, or West Virginia Water Pollution Act.

cc. “State” shall mean the State of West Virginia, acting on behalf of the West Virginia Department of Environmental Protection and West Virginia Department of Health and Human Resources and with respect to notices, shall mean each of the departments, unless otherwise specified.

dd. “Tier I Pump Station” shall mean any or all of the following Pump Stations: the Route 37 Pump Station; the Cedar Heights A Pump Station; the Cedar Heights B Pump Station; or the Orchard Street Pump Station. See pumping station map located in Appendix A.

ee. “Tier II Pump Station” shall mean any pump station shown in Appendix A that is not a Tier I Pump Station.

ff. “United States” shall mean the United States of America, acting on behalf of EPA.

gg. “Wastewater Treatment Plant” or “WWTP” shall mean the sewage treatment plant owned and operated by and located in the Town of Fort Gay, Wayne County, West Virginia, which has a 0.092 million gallon per day design flow and includes two 606,000-gallon aeration cells equipped with surface aerators, one settling cell with 29,000 square feet surface area, and one 2,600-gallon chlorine chamber. The WWTP discharges treated and disinfected wastewater to the Big Sandy River through Outlet 001 at Mile Point 25.6.

hh. “West Virginia Department of Environmental Protection” or “WVDEP” shall mean the West Virginia Department of Environmental Protection and any successor departments, agencies, or instrumentalities of the State of West Virginia.

ii. “West Virginia Department of Health and Human Resources” or “WVDHHR” shall mean the West Virginia Department of Health and Human Resources and any successor departments, agencies, or instrumentalities of the State of West Virginia.

VI. COMPLIANCE REQUIREMENTS

10. Fort Gay shall achieve and maintain full compliance with the terms and conditions of its NPDES Permit and the provisions of the CWA, SDWA, WPCA, and Chapter 16, Article 1, Section 9a of the West Virginia Code, and the regulations promulgated thereunder and with the compliance program and the schedules set forth below.

WWTP and Collection System

11. **SSO Reporting and Record Keeping.** Fort Gay shall orally notify EPA and the State of any SSO from any component of the Collection System to any waters of the United States or the State immediately upon becoming aware of the SSO.

12. Fort Gay shall also provide a written report to EPA and the State within five (5) days of the time Fort Gay first became aware of the SSO. The written report shall contain information on the following information:

- a. The location of the SSO by street address, or any other appropriate method (e.g., by latitude and longitude coordinates);
- b. Name of the receiving water, if applicable, including via separate storm sewer;
- c. An estimate of the volume (in gallons) of the sewage discharge;
- d. A description of the source of the overflow (e.g. manhole, pump station, etc.);
- e. Estimated date and time when the overflow began and when it stopped;
- f. The cause or suspected cause of the overflow;

g. Corrective action that has been or will be taken to prevent future overflow, including work orders associated with investigation and repair of system problems related to the SSO and documentation of performance and implementation measures;

h. Whether the overflow has caused, or contributed to, an adverse impact on water quality in the receiving water body.

13. Fort Gay shall maintain a copy of any written reports prepared pursuant to Paragraph 12 above for all SSOs from the Collection System in accordance with Section XIV (Information Collection and Retention).

14. **Certified Operator and Staffing**. Within thirty (30) Days of the Effective Date, Fort Gay shall certify to EPA and the State that the operation and maintenance of the WWTP and Collection System is being performed or supervised by a certified operator possessing at least a Class I certificate for Waste Water Treatment Plant Operators as issued by the State. Fort Gay shall provide to EPA and the State for review and approval, a copy of the contract between the Town and the Certified Operator which includes all the duties and responsibilities of the operator as well as hours of work. Such certified operator shall complete the State-required continuing education training hours every two-year renewal period.

15. Within thirty (30) Days of the Effective Date, Fort Gay shall evaluate its staffing of the WWTP, including, at a minimum, identifying any staffing level increases necessary to ensure operation of the WWTP and Collection System in compliance with all applicable legal requirements. If additional staff is necessary for the Town to properly operate the WWTP and Collection System, the evaluation shall include a schedule for the hiring of additional staff. Fort Gay shall provide to EPA and the WVDEP for review and approval, a copy of this evaluation.

16. **Effluent Limitations.** Immediately at the Effective Date of this Consent Decree, Fort Gay shall fully comply with the effluent limitations for its WWTP provided in Section A of Fort Gay's NPDES Permit.

17. **Discharge Monitoring Reports.** Immediately at the Effective Date of this Consent Decree, Fort Gay shall fully comply with the Discharge Monitoring Report ("DMR") requirements provided in Section C.8 and Appendix A, Part III.2 of Fort Gay's NPDES Permit. Fort Gay shall complete and timely submit to the WVDEP a certified monthly DMR no later than twenty (20) days or postmarked no later than fifteen (15) days following the end of each month. Fort Gay shall also submit each monthly DMR electronically to EPA at the following: ford.nancy@epa.gov. Each DMR shall be signed and certified in accordance with 40 C.F.R. § 122.22(b) and (d).

18. **Inflow/Infiltration Program Requirements.** Within ninety (90) days of the Effective Date, Fort Gay shall submit to EPA and WVDEP for approval an Inflow/Infiltration Control Program as required by Section C.20 of Fort Gay's NPDES Permit. Following EPA and WVDEP approval of the program, Fort Gay shall immediately implement the program in accordance with the NPDES Permit requirements. A written progress report describing the implementation and accomplishments of the Inflow/Infiltration Control Program shall be provided on a quarterly basis as an attachment to the Discharge Monitoring Report.

19. **Hydraulic and Organic Loadings Plan.** Within one hundred twenty days (120) of the Effective Date, Fort Gay shall submit to EPA and WVDEP for approval a Plan of Action as required by Section C.11 of Fort Gay's NPDES Permit.

20. **Capital Improvement Plan Schedule.** Within sixty (60) Days of the Effective Date, Fort Gay shall complete and submit to EPA for approval the Capital Improvement Plan

Schedule provided in Appendix C to this Consent Decree. The Capital Improvement Plan Schedule submitted to EPA by Fort Gay shall provide for implementation of the capital improvements listed below in Paragraph 21 on the shortest feasible schedule, and shall further provide that all the capital improvement must be completed within three years after the Effective Date.

21. **Capital Improvements.** In accordance with the schedule submitted by Fort Gay in accordance with Paragraph 20 and approved or corrected by EPA in accordance with Paragraph 33, Fort Gay shall perform the following:

a. **Pump Station Operation.** Fort Gay shall obtain and install additional sewage pump(s) such that it has two operational pumps at the following pump stations with dual pump design requirements: Orchard Street Pump Station; Cedar Heights A Pump Station; Cedar Heights B Pump Station; Route 37 Pump Station; Bridgemart Pump Station; Cass Street A Pump Station; and Cass Street B Pump Station. Fort Gay shall also install or replace any other necessary equipment, such as control panels, guide rails, overflow pipes and pipe screens, to ensure proper operation at all pump stations. Fort Gay shall give priority to completing these improvements at the Tier I Pump Stations.

b. **Spare Parts.** Fort Gay shall maintain at all times (i) a replacement pump for each make, model or type of pump currently in use at any pump station; and (ii) additional control panel(s) and related parts for its pump stations such that it has sufficient parts in its possession to repair existing equipment malfunctions to ensure continued operation in the event of future equipment failures.

c. Any pump or replacement part obtained or maintained by Fort Gay in order to satisfy the above mentioned requirements shall be stored at a secure Town-owned

location within the Town of Fort Gay in such a manner that designees of the Town of Fort Gay can access such pumps or replacement parts at any time.

d. Electrical Backup. Fort Gay shall maintain an electrical generator and all necessary electrical fittings to provide emergency backup power to the Bridge Mart Pump Station sufficient to run the pumps and all necessary appurtenances at all times. Fort Gay shall install transfer switches and any additional electrical fittings necessary to allow each of the remaining pump stations to be temporarily powered by a backup generator.

e. Security. Fort Gay shall install security fencing with secure locks around each of the pump stations in its Collection System. To the extent that such secure fencing and locks may be impossible due to a pump station's proximity to paved roads, Fort Gay shall provide alternative means to secure such pump station to prevent vandalism. Fort Gay shall provide written confirmation to EPA and the State that such security measures have been completed, indicating which pump stations, if any, have alternative security and describing such security. Fort Gay shall give priority to completing these improvements at the Tier I Pump Stations.

f. Flow Monitoring, Metering, and Recording Requirements. Fort Gay shall monitor effluent flow consistent with NPDES permit requirements with a properly maintained and calibrated meter. Fort Gay shall bury the power cable to the meter to prevent vandalism.

g. Chlorination and Dechlorination.

(i) Fort Gay shall maintain and properly operate the chlorine disinfection system at its WWTP at all times.

(ii) Fort Gay shall maintain and properly operate the WWTP dechlorination unit at all times.

22. **Operation and Maintenance Manual.** Within 180 Days of the Effective Date, Fort Gay shall develop and submit to EPA and WVDEP an Operation and Maintenance Manual (“WWTP O&M Manual”) detailing the procedures for operation and maintenance of its WWTP and Collection System. At a minimum the WWTP O&M Manual shall include:

- a. Inventory of equipment;
- b. Inventory of spare parts and procedures for maintaining, storing and replenishing inventory;
- c. Standard operating procedures for each component of the WWTP;
- d. Detailed inspection and maintenance requirements for the WWTP, including separate requirements for each component of the system, and a schedule for regular maintenance;
- e. Standard operating procedures for each pumping station;
- f. Regular inspection and maintenance schedule for the Collection System;
- g. Procedures for determining the cause of equipment and/or system failures, and identifying preventative measures for minimizing future failures;
- h. Procedures for tracking preventative maintenance activities;
- i. Procedures for tracking non-routine maintenance and repairs;
- j. Copies of relevant forms to be used as part of the inspection and maintenance program;
- k. Functional description of product literature for all information management system software to be used as part of the maintenance program;
- l. Procedures for accepting hauled-in waste;
- m. Sludge removal and disposal procedures;

n. Records retention procedures that comply with NPDES Permit, State, and Federal statutory and regulatory requirements.

23. **Fats, Oils, and Grease Control Program**. Within 180 Days of the Effective Date of the Consent Decree, Fort Gay shall submit to EPA and WVDEP for approval a Fats, Oil and Grease (“FOG”) control program that, at a minimum: (i) identifies on a map the reoccurrences of grease blockages; (ii) requires the installation of grease traps and/or the implementation of a trap cleaning and inspection program; (iii) procedures for maintaining grease trap cleaning/service records, including the creation and retention of a grease trap cleaning/maintenance log; and (iv) a proposal for scheduled inspections of known problem areas, including the Orchard Street Pump Station and the Fort Gay Elementary School and Town Community Center grease traps. Upon approval, the FOG Program shall be immediately implemented and incorporated into the WWTP O&M Manual.

24. **SSO Emergency Response Plan**. Within sixty (60) Days of the Effective Date, Fort Gay shall develop a comprehensive SSO Emergency Response Plan. The plan shall include, at a minimum: (i) a detailed description of the actions Fort Gay will undertake to immediately provide public notice of, and limit access to and contact with, any unpermitted discharge of pollutants from the wastewater treatment and collection system to waterways and ground surfaces; (ii) a detailed description of the actions Fort Gay will undertake to provide notice to EPA, WVDEP, WVDHHR, and other appropriate federal, state and local agencies; (iii) a detailed plan (including the development of response standard operating procedures) to minimize the volume of untreated wastewater transmitted to surface waters; (iv) identification of the personnel and resources that shall be made available by Fort Gay to correct or repair the condition causing or contributing to unpermitted discharge to surface waters; (v) a plan to ensure

the preparedness, including responsiveness training of Fort Gay employees, contractors, and personnel necessary for the effective implementation of the SSO Emergency Response Plan in the event of an unpermitted discharge to surface waters. Upon approval by the Plaintiffs, Fort Gay shall immediately implement the plan and it shall be incorporated into the WWTP O&M Manual and become enforceable under this Decree.

25. **Emergency Response Plan.** Within 180 Days of the Effective Date, Fort Gay shall develop a comprehensive Emergency Response Plan for its WWTP and Collection System, incorporating the SSA Emergency Response Plan required by Paragraph 24, and submit it to the Plaintiffs for review and approval. The plan shall address, at a minimum: (i) plans for detecting and characterizing potential emergency conditions with its WWTP and Collection System; (ii) plans for investigating causes of potential emergency conditions with its WWTP and Collection System; (iii) plans for notification and coordination with other federal, state, and local emergency response agencies; and (iv) plans for mitigating impacts and responding to potential emergency conditions with its WWTP and Collection System. Upon approval, the Emergency Response Plan shall be immediately implemented and incorporated into the WWTP O&M Manual.

26. Fort Gay shall review the Emergency Response Plan on an annual basis and update such plan as necessary. Each annual update of the Emergency Response Plan shall be submitted to Plaintiffs for comment, and upon incorporation of such comments, the revised Emergency Response Plan shall be incorporated into, and become enforceable under, this Consent Decree.

Fort Gay Water Works

27. **FGWW Staffing**. Fort Gay shall have a certified operator present at all times that the FGWW is operating. Within sixty (60) Days of the Effective Date, Fort Gay shall evaluate its staffing of the FGWW, including, at a minimum, identifying any staffing level increases or other changes necessary to ensure operation of the FGWW in consistent compliance with all applicable legal requirements. If additional staff is necessary for the Town to properly operate the FGWW facility, the assessment shall include a schedule for the hiring of additional staff. Fort Gay shall provide to EPA and the WVDHHR for review and approval, a copy of this evaluation.

28. **FGWW Capital Improvement Plan**.

a. **Metering**. Within 120 Days of the Effective Date, Fort Gay shall install meters on every customer, including City Hall, all schools, and all fire stations, to at least keep a record of water used for water accountability calculations.

b. **Cross-Connection and Control Program**. Within ninety (90) Days of the Effective Date, Fort Gay shall develop and implement a Cross-Connection Control Program in accordance with W. Va. Code St R. § 64-15-8.2.

29. **FGWW Operation and Maintenance Manual**. Within 180 Days of the Effective Date, Fort Gay shall develop and submit to EPA and WVDHHR an Operation and Maintenance Manual (“FGWW O&M Manual”) detailing the procedures for operation and maintenance of its drinking water facility. At a minimum, the FGWW O&M Manual shall include:

- a. Standard operating procedures of each component of the FGWW system;
- b. Turbidity monitoring procedure and schedule;
- c. Sludge removal and disposal procedures and schedule;

- d. Schedule for the internal and external inspection and maintenance of finished water storage tanks;
- e. Distribution system flushing and valve exercise procedures;
- f. Procedures for disinfecting new and repaired lines;
- g. Procedures for performing bacteriological testing on new and repaired lines;
- h. Procedures for determining the cause of equipment and/or system failures, and identifying preventative maintenance measures for minimizing future failures;
- i. Procedures for tracking preventative maintenance activities;
- j. Procedures for tracking non-routine maintenance and repairs;
- k. Copies of relevant forms to be used as part of the inspection and maintenance program;
- l. Records retention procedures;
- m. Procedures for issuing Boil Water Notices and other required notifications to the public under 40 C.F.R. Subparts I (Lead and Copper Rules for Public Education), O (Consumer Confidence Reports), and Q (Public Notice).

30. **FGWW Emergency Response Plan**. Within 180 Days of the Effective Date, Fort Gay shall develop a comprehensive Emergency Response Plan for the FGWW. The plan shall address, at a minimum, the following for the FGWW: (i) plans for detecting and characterizing potential emergency conditions; (ii) plans for investigating causes of potential emergency conditions; (iii) plans for notification and coordination with other federal, state, and local emergency response agencies; and (iv) plans for mitigating impacts and responding to potential emergency conditions. Within 180 Days of the Effective Date, Fort Gay shall submit

the Emergency Response Plan to the EPA and the WVDHHR for its review, and shall implement the Plan immediately unless the EPA or the WVDHHR provides Fort Gay written notice directing Fort Gay not to implement the Plan as submitted. The Emergency Response Plan shall be incorporated in the FGWW O&M Manual.

31. **FGWW Emergency Notification.** Whenever any event occurs which may pose an imminent threat to the public health or welfare or the environment, Fort Gay shall notify EPA and the WVDHHR orally or by electronic or facsimile transmission as soon as possible, but no later than twenty-four (24) hours after Fort Gay first becomes aware of an event. This reporting requirement is in addition to the requirements set forth in Section X (Certification).

32. **FGWW Record Retention.** FGWW records, including but not limited to, all laboratory tests, chlorine residuals, boil water notices and copies of written communication relating to Sanitary Surveys shall be kept on file for a period in accordance with 40 C.F.R. § 141.33 and W. Va. Code St. R. § 64-3-10.

General Provisions

33. **Review and Approval Procedures.** Following review of any plan, report, or other item that is required to be submitted pursuant to this Consent Decree and its attachments, EPA after consultation with the State shall in writing: (i) approve the submission; (ii) approve the submission upon specified conditions; (iii) approve part of the submission and disapprove the remainder; or (iv) disapprove the submission.

34. If the submission is approved pursuant to Paragraph 33(i), Fort Gay shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 33 (ii) or (iii), Fort Gay

shall, upon written direction from EPA, after consultation with the State, take all actions required by the approved plan, report, or other item that EPA, after consultation with the State, determines are technically severable from any disapproved portions, subject to Fort Gay's right to dispute only the specified conditions or the disapproved portions, under Section XIII (Dispute Resolution) of this Decree.

35. If the submission is disapproved in whole or in part pursuant to Paragraph 33 (iii) or (iv), Fort Gay shall, within forty-five (45) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, Fort Gay shall proceed in accordance with the preceding Paragraph.

36. Any stipulated penalties applicable to the original submission, as provided in Section VIII (Reporting Requirements) of this Decree, shall accrue during the 45-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Fort Gay's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

37. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after consultation with the State, may again (i) require Defendant to correct any deficiencies, in accordance with the preceding Paragraphs, or (ii) may itself correct any deficiencies, subject to Defendant's right to invoke Dispute Resolution and the right of EPA and the State to seek stipulated penalties as provided in the preceding Paragraphs.

38. **Permits.** Where any compliance obligation under this Section requires Defendant to obtain a Federal, State, or local permit or approval, Fort Gay shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Fort Gay may seek relief under the provisions of Section XII (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VII. **RECEIVERSHIP**

39. Immediately upon the Effective Date, the County Commission of Wayne County is appointed Receiver of the Fort Gay WWTP and Collection System and the Fort Gay Water Works.

40. The Receiver shall pursue the following objectives:

- a. To comply with all the requirements of this Consent Decree, including but not limited to the requirements of Section VI;
- b. To operate and maintain the Facilities in compliance with the Clean Water Act, the Safe Drinking Water Act, their implementing regulations, and applicable state law;
- c. To respond to threats to the public health caused by the conditions of the Facilities;
- d. To make such capital and managerial improvements as are necessary to return the Facilities to a condition in which the Town of Fort Gay can feasibly sustain its operations; and

e. To avoid imposing unsustainable burdens on the customers of the Facilities.

41. **Compliance with Instructions.** The Receiver will be managing a system that has the potential to expose people and the environment to pathogens and other pollutants. The Receiver has limited financial resources with which to manage the facilities. Accordingly, the Receiver shall comply with the instructions of the EPA, which shall consult with the State. If the Receiver is unable to comply with EPA's instructions with the financial or other resources available, it shall apply to this Court for guidance.

42. **Utility Accounts.**

a. Within 30 days of the Effective Date, the Receiver shall establish a Water Utility Account and a Sewer Utility Account and shall deposit all revenues, grants, loans, and other monies related to the Fort Gay WWTP and Collection System and Fort Gay Water Works into the appropriate account.

b. Upon the creation of the Utility Accounts, the Receiver shall notify the Plaintiffs in writing of its creation. Such notice shall include the identity and location of the bank at which the Utility Accounts are established, the account number, and other identifying information.

c. The Receiver may direct the Treasurer of the Town of Fort Gay to deposit any money currently held on behalf of the Facilities into the appropriate Utility Accounts.

d. The funds in the Utility Accounts, including all accrued interest, shall be used to fund the capital improvement and operation and maintenance of the Facilities, including, but not limited to, the fees and wages of persons or entities provided for in Paragraph 43.e and f, and reimbursement of the reasonable expenses of the Receiver as provided in Paragraph 46.

43. **Authority of the Receiver**. Except as otherwise provided in this Consent Decree, the Receiver shall have the full power and authority necessary to carry out the requirements of this Consent Decree and assumes all of the responsibilities, functions, duties, powers, and authority of the Town of Fort Gay insofar as they affect the Town's compliance with this Consent Decree, including but not limited to the authority to:

- a. Supervise such employees of the Town of Fort Gay, as deemed necessary by the Receiver, to perform duties associated with this Consent Decree;
- b. Respond to notices of violation and lawful orders of the EPA, the WVDEP, the WVDHHR, and other governmental entities;
- c. Complete, sign, and verify reports to government agencies;
- d. Access, without limitations, the staff, documents, books, records, electronic data, and facilities of the Town of Fort Gay deemed necessary by the Receiver for carrying out this Consent Decree and to make such employees and items available to any consultants, accountants, attorneys, or other such persons employed by the Receiver;
- e. Hire all such operators, consultants, professionals, contractors, engineering firms, and counsel that the Receiver deems necessary for the performance of administrative, financial, legal, accounting, engineering, construction, and operations services;
- f. Reimburse the Town for the use of Town employees for performance of duties associated with this Consent Decree;
- g. Enter into contracts. In awarding contracts, the Receiver shall follow the procedures in statutes, regulations, and ordinances governing the Town of Fort Gay unless, in the best judgment of the Receiver, such compliance would unreasonably delay: (i) progress in

meeting the requirements of this Consent Decree; or (ii) remediation of an imminent and substantial threat to human health or the environment.

h. Collect fees from the customers of the Fort Gay Water Works and Fort Gay POTW and deposit them into the Utility Accounts;

i. Adjust the rates and fees that the Town of Fort Gay charges the customers of the Facilities. In adjusting such rates and fees, the Receiver shall comply with the requirements of the West Virginia Public Service Commission unless, in the best judgment of the Receiver, such compliance would unreasonably delay progress in meeting the requirements of this Consent Decree;

j. Seek out and apply for grants, loans, and other sources of funds to cover the requirements of this Consent Decree and the expenses of such other improvement projects as are deemed necessary and expedient by the Receiver and the EPA, in consultation with the State;

k. Comply with the terms and conditions of any current or future grant or loan made to fund improvements to the Facilities;

l. Establish and maintain a fund for responding to SSOs and other emergencies; and

m. Apply to this Court for instructions or modification of this Section of the Consent Decree;

44. **Reporting Requirements.** In addition to providing reports as required by Section VIII (Reporting Requirements) of this Consent Decree, the Receiver shall make quarterly reports to the Court and to the United States, the WVDEP, and the WVDHHR regarding the progress made toward compliance with this Consent Decree.

45. **Liability of the Receiver.** The Receiver and its employees, officers, and agents are entitled to immunity from suit in their personal capacity when acting within the scope of their authority under Section VII (Receivership). No suit shall be filed against the Receiver without the consent of the Court.

46. **Remuneration of the Receiver.** The Receiver shall not be compensated, but may be reimbursed for reasonable expenses in the following manner:

a. Within six months of incurring the expense, the Receiver shall submit to the Parties a request for reimbursement. The request shall specify the terms for the reimbursement and shall be submitted to the Parties in accordance with Section IX (Notices).

b. The Parties shall notify the Receiver and each other Party of any objections to the request for reimbursement within 30 days of receiving notice pursuant to Section IX (Notices).

c. If any Party objects to a request for reimbursement, the Parties will engage in informal discussions for a period of 30 days in an attempt to resolve the dispute. If the Parties resolve the dispute, the Receiver shall submit to the Parties a revised request for reimbursement to which the Parties shall again have 30 days to object. If the Parties are unable to resolve a dispute, the Receiver may file a request for reimbursement with the Court. Any Party objecting to the request for reimbursement shall file an opposition within 15 days. The Court shall determine whether, and on what terms, the Receiver may be reimbursed.

d. If no Party objects to a request for reimbursement, the Receiver may transfer funds from the Utility Account to itself according to the terms in the request.

47. **Limitations of Authority.** Unless otherwise ordered by the Court, the Receiver shall not:

- a. Encumber any real property asset of the Town of Fort Gay; or
- b. Propose or agree to consolidate the Fort Gay WWTP and Collection System or the Fort Gay Water Works with any other public or private utilities, or
- c. Authorize another sewer district or other government agency to operate within the area currently served by the Town of Fort Gay.

48. **Termination of the Receivership.**

- a. The Receivership shall terminate 6 months after completing implementation of the Capital Improvement Plan in accordance with Paragraph 21, provided that the Town has been in substantial compliance, as determined by EPA in consultation with the State, with its permits and the requirements of the CWA, the SDWA, and applicable state law.
- b. For good cause shown, the United States or the State may move for removal or replacement of the Receiver, or termination of the Receivership.
- c. If the Receiver determines that it is unable or unwilling to continue to act as Receiver before the time for termination as described in Paragraph 48.a, either due to a lack of resources to carry out its functions or for any other reason, the Receiver may file a motion with this Court seeking to withdraw.
- d. If the Receiver withdraws, the United States, in consultation with the State, shall nominate an alternate or move to terminate the receivership.
- e. Termination of the Receivership, regardless of the reason, shall not relieve the Town of Fort Gay from complying with this Consent Decree.

49. **Duties of the Town During Receivership.** The Town of Fort Gay will direct its employees to continue supporting the operations of the Fort Gay WWTP and Collection System and Fort Gay Water Works. At a minimum, the Town shall be responsible for:

- a. Cutting grass in and around: (i) the Fort Gay Water Works and any above-ground components of the distribution system such as storage tanks; (ii) the Fort Gay WWTP sewage treatment lagoon; and (iii) any above-ground components of the Fort Gay WWTP Collection System, such as pump stations;
- b. Mending fences and making minor repairs;
- c. Maintaining roads and driveways to provide reasonable access to components of the Fort Gay WWTP and Collection System and Fort Gay Water Works;
- d. Inspecting on a daily basis, as directed by the Receiver or its employees, each sewage pump station, and keeping written records of such inspections;
- e. If so directed by the Receiver, mailing bills for service, collecting payments, and depositing such payments into the Utility Account dedicated for the operation and maintenance of the Fort Gay WWTP and Collection System and Fort Gay Water Works and under the exclusive control of the Receiver;
- f. Providing information in response to requests from the Receiver, the EPA, or the State; and
- g. Answering the phone, documenting customer complaints, and responding to them to the extent practicable.

VIII. REPORTING REQUIREMENTS

50. **Quarterly Progress Reports.** On a quarterly basis of each calendar year, January, April, July and October, and commencing on the first quarter after the Effective Date of this Consent Decree and continuing until termination of this Consent Decree pursuant to Section XX (Termination), Fort Gay shall submit written status reports on its progress in implementing the Consent Decree to Plaintiffs (“Quarterly Reports”). The Quarterly Reports shall be postmarked no later than fifteen (15) days or shall be received no later than twenty (20) days

following the end of the three (3) month period. In each report, Fort Gay shall provide the following:

- a. A description of the projects and activities conducted during the reporting period to comply with the requirements of this Consent Decree;
- b. A summary of all the problems or potential problems encountered during the reporting period, and the actions taken to rectify the problems;
- c. A summary of any unresolved delays encountered or anticipated that may affect the future schedule for deliverables, and a description of efforts made to mitigate those delays or anticipated delays;
- d. A record of all SSO discharges, including Building/Private Property Backups, that took place during the reporting period, including:
 - (i) Date, time and duration of each SSO discharge; and
 - (ii) Volume and nature of each SSO discharge;
- e. A summary of all contacts with EPA and WVDEP during the reporting period, including but not limited to the date deliverables under this Decree were sent to EPA and/or to WVDEP, and/or WVDHHR; and
- f. Disclosure of any non-compliance with the requirements of this Decree, including:
 - (i) An explanation of the likely cause of the non-compliance, or, if the likely cause of the non-compliance cannot be determined at the time the Quarterly Report is due, an explanation as to why the likely cause cannot be determined at that time, and a projected date by which it will be determined;

(ii) A description of the remedial steps taken, or to be taken, to prevent or minimize such non-compliance in the future, and

(iii) A projection of work to be performed pursuant to this Consent Decree during the next or succeeding quarter. Notification to Plaintiffs of any anticipated delay shall not, by itself, excuse the delay.

IX. NOTICES

51. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

By U.S. Mail:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-09447

By Express Mail or Courier:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
601 D Street, NW
Washington, DC 20004
Re: DOJ No. 90-5-1-1-09447

To EPA:

Branch Chief, NPDES Enforcement (3WP42)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Deane H. Bartlett (3RC20)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

To the State:
Jennifer L. Hughes
Office of Legal Services
W.V. Department of Environmental Protection
601 57th Street SE
Charleston, West Virginia 25304

M. Claire Winterholler
Assistant Attorney General
West Virginia Department of Health and Human Resources
350 Capital Street
The Diamond Building, Room 702
Charleston, West Virginia 25301

To Fort Gay:

Mayor
Fort Gay Town Hall
P.O. Box 336
Fort Gay, WV 25514

52. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

53. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

X. CERTIFICATION

54. Any document that Fort Gay is required by this Consent Decree to submit, including reports, plans or other submissions that Fort Gay is also required to submit by its NPDES Permit, shall be signed by an official or authorized agent of Fort Gay and shall include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those individuals who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

55. This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

56. The reporting requirements of this Consent Decree do not relieve Fort Gay of any reporting obligations required by the CWA, SDWA, or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

57. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

XI. STIPULATED PENALTIES

58. **Liability for Stipulated Penalties During Receivership.** If Fort Gay fails to comply with Paragraphs 42.c or 49 of this Consent Decree, it shall be liable to the United States and the State for stipulated penalties in the amount of \$200 per day for each violation, unless excused by Section XII (Force Majeure).

59. **Liability for Stipulated Penalties After Receivership.** After termination of the Receivership created by this Consent Decree, Fort Gay shall be liable to the United States and to the State for violations of this Consent Decree as specified below, unless excused under Section XII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all

applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

60. **Noncompliance with SSO Compliance Requirements.** The following stipulated penalties shall accrue per violation per Day for each violation of Section VI (Compliance Requirements) or of any schedule or plan submitted in accordance with the requirements of this Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th Day	\$300
15th through 30th Day	\$400
31st Day and beyond	\$500

61. **SSO Events.** For each SSO that occurs from the WWTP or Collection System within eighteen (18) months from the Effective Date of the Consent Decree, a stipulated penalty of \$500 per day shall accrue. For each SSO that occurs from the WWTP or Collection System after eighteen (18) months from the Effective Date of the Consent Decree, a stipulated penalty of \$750 per day shall accrue.

62. **Noncompliance with all other Provisions of the Consent Decree.** Stipulated penalties shall accrue for each Day of noncompliance with all requirements of this Consent Decree not otherwise provided for by the Stipulated Penalty Provisions in Paragraphs 60-61 as follows:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th Day	\$300
15th through 30th Day	\$400
31st Day and beyond	\$500

63. **Accrual of Stipulated Penalties.** The stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day that a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

64. **Written Demand for Payment of Stipulated Penalties.** Fort Gay shall pay stipulated penalties to the United States and the State within thirty (30) days of receiving a written demand by any Plaintiff. Defendant shall pay fifty (50) percent of the total stipulated penalty amount due to the United States and fifty (50) percent to the State (twenty-five percent to WVDEP and twenty-five percent to WVDHHR). The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiffs.

65. Stipulated Penalties to be paid to the United States shall be paid by certified or cashier's check in the amount due, payable to the "U.S. Department of Justice," referencing the civil action number of this case and DOJ No. 90-5-1-1-09447, and delivered to the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of West Virginia, P.O. Box 1713, Charleston, West Virginia, 25326, (304) 345-2200. At the time of payment, Fort Gay shall send a copy of the check together with a transmittal letter, which shall state that the payment is for the stipulated penalties owed pursuant to the Consent Decree in U.S. v. Town of Fort Gay and shall reference the civil action number and DOJ case number 90-5-1-1-09447, to the United States in accordance with Section IX (Notices); by email to acctsreceivable.CINWD@epa.gov and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

EPA Docket Clerk (3RC00)
Office of Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

66. Stipulated penalties paid to WVDHHR shall be paid by certified or cashier's check made payable to Commissioner, Bureau for Public Health, W.V. Dept. of Health and Human and Resources, for deposit in the Safe Drinking Water Penalty Fund. Such payment shall be accompanied by a transmittal letter, which shall state that the payment is for stipulated penalties owed pursuant to the Consent Decree in U.S. v. Town of Fort Gay and shall identify for which violation(s) the penalties are being paid, and shall be mailed to:

Commissioner, Bureau for Public Health
West Virginia Department of Health and Human Resources
350 Capitol Street, Room 702
Charleston, WV 25301

67. Stipulated penalties paid to WVDEP shall be paid by certified or cashier's check made payable to WVDEP for deposit in the Water Quality Management Fund. Such payment shall be accompanied by a transmittal letter, which shall state that the payment is for stipulated penalties owed pursuant to the Consent Decree in U.S. v. Town of Fort Gay and shall identify for which violation(s) the penalties are being paid, and shall be mailed to:

Michael Zeto, Chief Inspector
Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

68. In the event that a stipulated penalty is not paid when due and according to the terms of this Consent Decree, the stipulated penalty shall be payable with interest from the original due date to the date of payment at the statutory judgment rate set forth at 28 U.S.C. § 1961(a). Nothing in this Paragraph shall be construed to limit the United States or the State

from seeking any remedy otherwise provided by law for Fort Gay's failure to pay any stipulated penalties.

69. **Discretion to Reduce or Waive Stipulated Penalties.** Either EPA, WVDEP, or WVDHHR may in the unreviewable exercise of their discretion, reduce or waive stipulated penalties due it under this Consent Decree. If one Plaintiff reduces or waives stipulated penalties, the Plaintiff not offering a waiver or reduction maintains its authority to require payment of stipulated penalties.

70. **Stipulated Penalty Accrual During Dispute Resolution.** Stipulated penalties shall continue to accrue as provided in this Section during any dispute resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the United States District Court for the Southern District Court of West Virginia, Fort Gay shall pay accrued penalties determined to be owing, together with interest, within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States and/or the State prevails in whole or in part, Fort Gay shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Fort Gay shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

71. Subject to the provisions of Section XV (Effect of Settlement/Reservation of Rights) of this Consent Decree, the stipulated penalties provided for in this Consent Decree shall

be in addition to any other rights, remedies, or sanctions available to the United States or the State for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CWA, SDWA, WPCA, or Chapter 16 Article 1, Section 9a of the West Virginia Code, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

XII. FORCE MAJEURE

72. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Fort Gay, of any entity controlled by Fort Gay, or of Fort Gay's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Fort Gay's best efforts to fulfill the obligation. The requirement that Fort Gay exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Fort Gay's financial inability to perform any obligation under this Consent Decree.

73. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Fort Gay shall provide notice orally or by electronic or facsimile transmission to EPA, WVDEP, and WVDHHR within twenty-four (24) hours of when Fort Gay first knew that the event might cause a delay. Within seven (7) days thereafter, Fort Gay shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Fort Gay's rationale for attributing such delay to a force majeure event if it intends to assert such a claim;

and a statement as to whether, in the opinion of Fort Gay, such event may cause or contribute to an endangerment to public health, welfare or the environment. Fort Gay shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Fort Gay from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Fort Gay shall be deemed to know of any circumstance of which Fort Gay, any entity controlled by Fort Gay, or Fort Gay's contractors knew or should have known.

74. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Fort Gay in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

75. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Fort Gay in writing of its decision.

76. If Fort Gay elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Fort Gay shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a

force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Fort Gay complied with the requirements of Paragraphs 72 and 73, above. If Fort Gay carries this burden, the delay at issue shall be deemed not to be a violation by Fort Gay of the affected obligation of this Consent Decree identified to EPA and the Court.

XIII. DISPUTE RESOLUTION

77. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Fort Gay's failure to seek resolution of a dispute under this Section shall preclude Fort Gay from raising any such issue as a defense to an action by the United States to enforce any obligation of Fort Gay arising under this Decree.

78. **Informal Dispute Resolution.** Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Fort Gay sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Fort Gay invokes formal dispute resolution procedures as set forth below.

79. **Formal Dispute Resolution.** Fort Gay shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position

shall include, but need not be limited to, any factual data, analysis, or opinion supporting Fort Gay's position and any supporting documentation relied upon by Defendant.

80. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of Fort Gay's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Fort Gay unless Fort Gay files a motion for judicial review of the dispute in accordance with the following Paragraph.

81. Fort Gay may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section IX (Notices) of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Fort Gay's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

82. The United States shall respond to Fort Gay's motion within the time period allowed by the Local Rules of this Court. Fort Gay may file a reply memorandum, to the extent permitted by the Local Rules.

83. **Standard of Review**

a. **Disputes Concerning Matters Accorded Record Review.** Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 79 (Formal Dispute Resolution) pertaining to the adequacy or appropriateness of plans, procedures to

implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Fort Gay shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 79 (Formal Dispute Resolution), Fort Gay shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

84. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Fort Gay under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 70 (Stipulated Penalty Accrual During Dispute Resolution). If Fort Gay does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

XIV. INFORMATION COLLECTION AND RETENTION

85. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

a. Monitor the progress of activities required under this Consent Decree;

b. Verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;

c. Obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;

d. Obtain documentary evidence, including photographs and similar data; and

e. Assess Fort Gay's compliance with this Consent Decree.

86. Upon request, Fort Gay shall provide EPA and the State or their authorized representatives, splits of any samples taken by Defendant. Upon request, EPA and the State shall provide Fort Gay splits of any samples taken by EPA or the State.

87. Until five (5) years after the termination of this Consent Decree, Fort Gay shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Fort Gay's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Fort Gay shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

88. At the conclusion of the information-retention period provided in the preceding Paragraph, Fort Gay shall notify the United States and the State at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the

preceding Paragraph and, upon request by the United States or the State, Fort Gay shall deliver any such documents, records, or other information to EPA or the State. Fort Gay may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Fort Gay asserts such a privilege, it shall provide the following:

- a. The title of the document, record, or information;
- b. The date of the document, record, or information;
- c. The name and title of each author of the document, record, or information;
- d. The name and title of each addressee and recipient;
- e. A description of the subject of the document, record, or information; and
- f. The privilege asserted by Fort Gay.

However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

89. Fort Gay may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Fort Gay seeks to protect as CBI, Fort Gay shall follow the procedures set forth in 40 C.F.R. Part 2.

90. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Fort Gay to maintain documents, records, or other information imposed by applicable Federal or State laws, regulations, or permits.

XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

91. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the date of lodging.

92. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 91. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA, SDWA, or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 91. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Fort Gay's Collection System or Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

93. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Collection System or Facilities, Fort Gay shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 91 of this Section.

94. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local law or regulation. Fort Gay is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits; and Fort Gay's compliance with this Consent Decree shall be no defense to any action

commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Fort Gay's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, SDWA or with any other provisions of federal, state, or local laws, regulations, or permits.

95. This Consent Decree does not limit or affect the rights of Fort Gay or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Fort Gay, except as otherwise provided by law.

96. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XVI. COSTS

97. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of any stipulated penalties due but not paid by Defendant.

XVII. EFFECTIVE DATE

98. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVIII. RETENTION OF JURISDICTION

99. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders

modifying this Decree, pursuant to Sections XIII (Dispute Resolution) and XIX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION

100. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

101. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIII (Dispute Resolution) of this Decree, provided that, instead of the burden of proof provided by Paragraph 83, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XX. TERMINATION

102. This Consent Decree shall not terminate until Fort Gay has completed all of the compliance requirements in Section VI (Compliance Requirements), and done the following:

- a. Certified in writing by a professional engineer to the United States and the State that all remedial measures required by Section VI (Compliance Requirements) have been completed;
- b. Certified in writing to the United States and the State compliance with all other provisions of the Consent Decree;
- c. Maintained substantial compliance, as determined by EPA, with this Consent Decree and its NPDES Permit for a period of six (6) consecutive months after the termination of the Receivership and for a period of twelve (12) consecutive months after the completion of all Section VI (Compliance Requirements) requirements; and

d. Paid any accrued stipulated penalties due under this Consent Decree.

103. Fort Gay may serve upon the United States and the State a Request for Termination, stating that Fort Gay has satisfied Paragraph 102 requirements, together with supporting documentation.

104. Following receipt by the United States and the State of Fort Gay's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Fort Gay has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with the State, agrees that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

105. If the United States, after consultation with the State, does not agree that the Consent Decree may be terminated, Fort Gay may invoke Dispute Resolution under Section XIII (Dispute Resolution) of this Decree. However, Defendant shall not seek Dispute Resolution under Paragraph 79 (Formal Dispute Resolution) of any dispute regarding termination until after service of its Request for Termination.

XXI. PUBLIC PARTICIPATION

106. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7 and West Virginia Code of State Rules § 47-10-16.2.c. The United States and the State of West Virginia reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Fort Gay consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to

challenge any provision of the Decree, unless the United States has notified Fort Gay in writing that it no longer supports entry of the Decree.

XXII. SIGNATORIES AND SERVICE

107. Each of the signatories to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

108. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Fort Gay agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIII. INTEGRATION

109. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties and the Receiver with respect to the settlement embodied in this Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXIV. FINAL JUDGMENT

110. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and Defendant. The Court finds that this Consent Decree is a reasonable and fair settlement and

adequately protects the public interest in accordance with the Clean Water Act, Safe Drinking Water Act, Water Pollution Control Act, and West Virginia Law.

XXV. APPENDICES

111. The following appendices are attached to and incorporated into this Consent

Decree:

“Appendix A” is a Facilities Map.

“Appendix B” is Fort Gay’s NPDES Permit.

“Appendix C” is the Capital Improvement Plan Schedule.

Entered this 12 day of January, 2011.

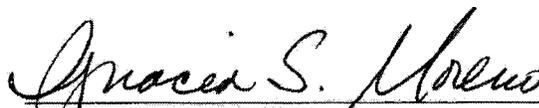


ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE
Southern District of West Virginia

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States and the State of West Virginia v. Town of Fort Gay*.

FOR THE UNITED STATES OF AMERICA,

Respectfully Submitted,



IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Dated: _____

11/18/11



STACY D. COLEMAN
DANIEL S. SMITH
Trial Attorneys
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
601 D Street NW
Washington, DC 20004
202-305-0371 (voice)
202-616-6583 (fax)
dan.smith2@usdoj.gov

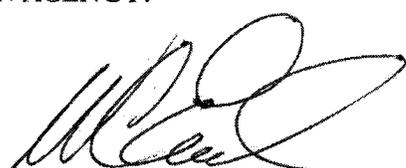
R. BOOTH GOODWIN II
U.S. Attorney,
Southern District of West Virginia

Dated: November 21, 2011

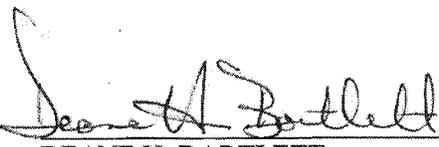
s/Stephen M. Horn

STEPHEN M. HORN
Assistant U.S. Attorney
U.S. Attorney's Office,
Southern District of West Virginia
300 Virginia Street East
Robert C. Byrd Federal Courthouse Room 4000
Charleston, WV 25301
(304) 345-2200

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated: 11/3/11 
SHAWN M. GARVIN
Regional Administrator
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

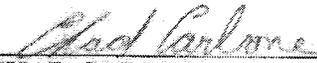
Dated: 10/26/11 
MARCIA E. MULKEY
Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: October 18, 2011 
DEANE H. BARTLETT
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

Dated: 11/13/11

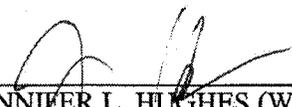

MARK POLLINS
Director, Water Enforcement Division
Office of Enforcement and
Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dated: 10/19/11


CHAD CARBONE
Office of Enforcement and
Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

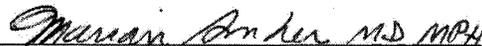
FOR THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Dated: 10/5/11



JENNIFER L. HUGHES (WVSB #9676)
Senior Counsel
WV Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304
(304) 926-0460

FOR THE WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES:

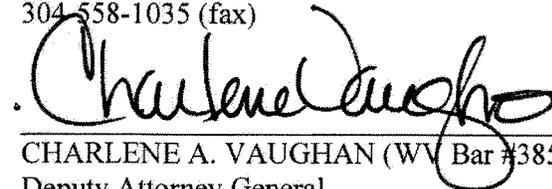


MARIAN SWINKER, M.D., M.P.H.
Commissioner
Bureau for Public Health
WV Department of Health and Human
Resources

Dated: October 7, 2011



M. CLAIRE WINTERHOLLER (WV Bar
#5589)
Assistant Attorney General
Room 702, The Diamond Building
350 Capital Street
Charleston, WV 25301
304-558-8304 (voice)
304-558-1035 (fax)



CHARLENE A. VAUGHAN (WV Bar #3855)
Deputy Attorney General
AG DHHR Division
Bldg. 3, Room 210
Capitol Complex
Charleston, WV 25305
304 558-2131
304 558-0947 (fax)

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, et al. v. Town of Fort Gay*.

FOR THE TOWN OF FORT GAY::

Oct. 07, 2011
Date

Rose Devaney
ROSE DEVANEY
Mayor
Fort Gay Town Hall
P.O. Box 336
Fort Gay, WV 25514

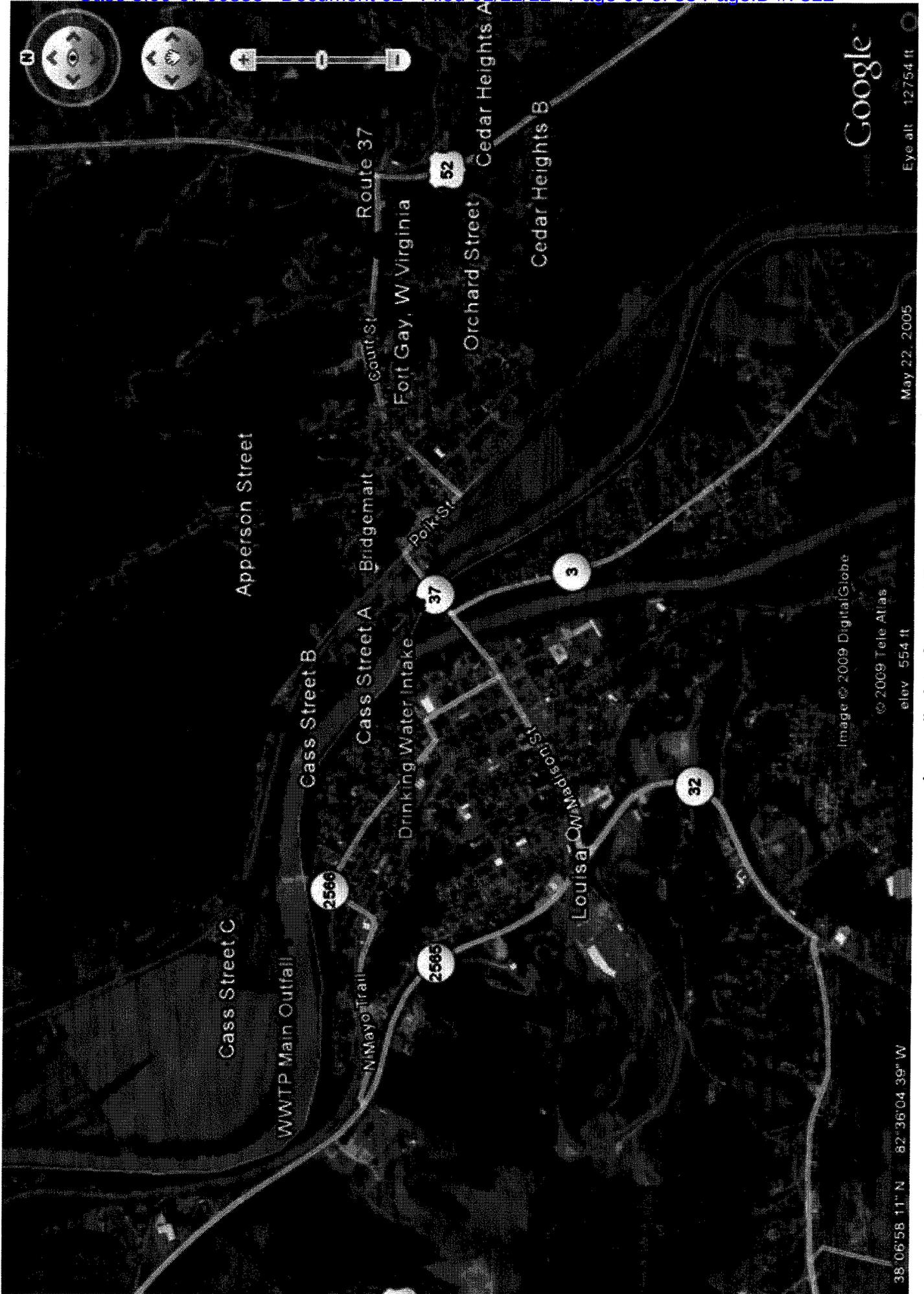
THE COUNTY COMMISSION OF WAYNE COUNTY, hereby indicates its consent to being appointed by the Court to serve as Receiver in accordance with the terms of conditions of this Consent Decree, entered in the matter of *United States, et al. v. Town of Fort Gay*:

Dated: October 6, 2011

Robert E. Pasley

Appendix A

United States v. Town of Fort Gay (Civ. No. 3:09-0855)



Appendix A to Consent Decree

Appendix B



STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER AND WASTE MANAGEMENT
601 57TH STREET SE
CHARLESTON, WV 25304-2345

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
WATER POLLUTION CONTROL PERMIT

NPDES PERMIT NO.: WV0085359
SUBJECT: Sewage

ISSUE DATE: February 26, 2010
EFFECTIVE DATE: March 28, 2010
EXPIRATION DATE: February 25, 2015
SUPERSEDES: Permit No. WV0085359
dated February 08, 2005

LOCATION: FORT GAY
(City)

Wayne
(County)

Big Sandy River
(Drainage Basin)

See the next page for a list of Outlets.

TO WHOM IT MAY CONCERN:

This is to certify that: FORT GAY TOWN OF
BOX 336
FORT GAY, WV 25514

is hereby granted a West Virginia NPDES Water Pollution Control Permit to:

operate and maintain an existing 0.092 MGD wastewater collection and treatment system. The collection system consists of 2,411 linear feet (lf) of six (6) inch diameter gravity sewer line; 4,993 lf of eight (8) inch diameter gravity sewer line; 30 manholes; 3 cleanouts; six (6) simplex lift stations; five (5) duplex lift stations; 9,351 lf of 1 1/2 inch diameter force main; 2,186 lf of two (2) inch diameter force main; 4,955 lf of six (6) inch diameter force main, and all other necessary appurtenances. The wastewater treatment system consists of a three (3) cell aerated lagoon. The initial two cells measure 81,000 sq. ft. each and each cell contains three (3) 3-HP aerators. The third cell measures 29,000 sq ft and provides settling and clarification. The system also includes chlorine-type disinfection with a 2,556 gallon chlorine contact tank, a dechlorination unit, and all other necessary appurtenances.

The system is designed to serve 1,040 persons or person equivalents within the Town of Fort Gay and to discharge treated and disinfected wastewater via Outlet 001 to the Big Sandy River (25.6 miles from its mouth) of the Ohio River.

An anti-degradation review has been conducted for Outlet No. 001 and Tier 1 protection is provided for the uses specified in Title 47, Series 2, Section 6.

This permit is subject to the following terms and conditions :

The information submitted on and with Permit Application No. WV0085359 dated the 7th day of December 2009 are all hereby made terms and conditions of this Permit with like effect as if all such permit application information were set forth herein and with other conditions set forth in Sections A, B, C, and Appendix A.

The validity of this permit is contingent upon the payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.

Page No. : 2 of 10

Permit No. : WV0085359

Inspection Unit	Latitude	Longitude	Base Water	Water Stream	Water Temp (F)	Water Temp (C)
001	38°07'16"	82°36'44"	BIG SANDY RV		N/A	25.6

A.001 DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning March 28, 2010 and lasting through midnight February 25, 2015 the permittee is authorized to discharge from Outlet Number(s) 001 (Sanitary)

Such discharges shall be limited and monitored by the permittee as specified below:

Effluent Characteristic	Discharge Limitations				Monitoring Requirements Measurement Frequency	Sample Type
	Quantity	Units	Other Units	Units		
Flow in Conduit or thru plant (Year Round) (ML-1)	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	Continuous	measured
BOD, 5-Day 20 Deg.C (Year Round) (ML-B)	23 Avg. Monthly	Lbs/Day	30 Avg. Monthly	60 Max. Daily	1/month	8 hr comp
Total Suspended Solids (Year Round) (ML-A)	23 Avg. Monthly	Lbs/Day	30 Avg. Monthly	60 Max. Daily	1/month	8 hr comp
BOD, % Removal (Year Round) (ML-K)	N/A	N/A	N/A	N/A	1/month	Calculated
Suspended Solids, % Removal (Year Round) (ML-K)	N/A	N/A	N/A	N/A	1/month	Calculated
Coliform, Fecal (Year Round) (ML-A)	N/A	N/A	200 Max. Geo. Mean	400 Max. Daily	1/month	Grab
pH (Year Round) (ML-A)	N/A	N/A	6 Inst. Min.	9 Inst. Max.	1/month	Grab
Ammonia Nitrogen (Year Round) (ML-A)	11.5 Avg. Monthly	Lbs/Day	15 Avg. Monthly	30 Max. Daily	1/month	8 hr comp
Nitrogen, Total (as N) (Year Round) (ML-A)	N/A	N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	1/quarter	8 hr comp

See Section C.23 of the permit for additional information

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):
 Effluent samples shall be collected at or as near as possible to the point of discharge.
 Effluent BOD5 samples need to be collected immediately preceding disinfection.

This discharge shall not cause violation of Title 47, Series 2, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

A.001 DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS:

Final Limitations

Year Round

During the period beginning March 28, 2010 and lasting through midnight February 25, 2015 the permittee is authorized to discharge from Outlet Number(s) 001 (Sanitary)

Such discharges shall be limited and monitored by the permittee as specified below:

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>			<u>Units</u>	<u>Monitoring Requirements</u>
	<u>Quantity</u>	<u>Units</u>	<u>Other Units</u>		
Phosphorus, Total (Year Round) (ML-A)	N/A	N/A	Rpt Only Avg. Monthly	mg/l	1/quarter 8 hr comp
Chlorine, Total Residual (Year Round) (ML-A)	N/A	N/A	0.028 Avg. Monthly	mg/l	1/week Grab
Copper, Total Recoverable (Year Round) (ML-A)	N/A	N/A	0.007 Avg. Monthly	mg/l	1/month 8 hr comp
Lead, Total Recoverable (Year Round) (ML-A)	N/A	N/A	0.0026 Avg. Monthly	mg/l	1/month 8 hr comp
Zinc, Total Recoverable (Year Round) (ML-A)	N/A	N/A	0.06 Avg. Monthly	mg/l	1/month 8 hr comp

See Section C.23 of the permit for additional information

See Section C.21 of the permit for additional information

See Section C.17 of the permit for additional information

See Section C.17 of the permit for additional information

See Section C.17 of the permit for additional information

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s):
Effluent samples shall be collected at or as near as possible to the point of discharge.
Effluent BOD5 samples need to be collected immediately preceding disinfection.

This discharge shall not cause violation of Title 47, Series 2, Section 3, of the West Virginia Legislative Rules issued pursuant to Chapter 22B, Article 3.

B. SCHEDULE OF COMPLIANCE

- 1. The permittee shall achieve compliance with the provisions for waste treatment and the monitoring requirements specified in the permit in accordance with the following schedule:**

May 26, 2010: The permittee shall submit a Plan of Action as required by Section C.11 of this permit.

- 2. Reports of compliance or non-compliance with, and progress reports on interim and final requirements contained in the above compliance schedule, if any, shall be postmarked no later than 14 days following each schedule date.**

Section C - Other Requirements

1. The herein-described treatment works, structures, electrical and mechanical equipment shall be adequately protected from physical damage by the maximum expected one hundred (100) year flood level and operability be maintained during the twenty-five (25) year flood level.
2. The entire sewage treatment facility shall be adequately protected by fencing.
3. The proper operation and maintenance of the listed sewage treatment facility shall be performed, or supervised, by a certified operator possessing at least a Class I certificate for Waste Water Treatment Plant Operators as issued by the State of West Virginia. The on-site attendance of this facility's Class I operator shall be determined and directed by the Bureau for Public Health, Office of Environmental Health Services.
4. The arithmetic mean of values for effluent samples collected in a seven consecutive day period shall not exceed 45.0 mg/l for BOD5 and TSS for Outlet No. 001. Furthermore, the permittee may submit mitigating factors as an attachment to its DMRs related to an excursion of this requirement. The Director may choose to take those mitigating factors into consideration in determining whether enforcement action is required.
5. The permittee shall not accept any new non-domestic discharges without first obtaining approval from the Director of the Division of Water & Waste Management as provided in Title 47, Series 10, Section 14 of the West Virginia Legislative Rules.
6. If any existing non-domestic discharge causes, or is suspected of causing, interference or pass through (as defined by 40 CFR 403.3) or otherwise violates any provision of 40 CFR 403, the permittee shall notify the Director of such violation or suspected violation.
7. If any existing non-domestic discharge is identified as being subject to Categorical Pretreatment Standard under 40 CFR Chapter 1, Subchapter N, and the discharge is not regulated by this permit, the permittee shall notify the Director of such identification.
8. The permittee shall submit each month according to the enclosed format, a Discharge Monitoring Report (DMR) indicating in terms of concentration and/or quantities the values of the constituents listed in Section A analytically determined to be in the plant effluent(s). Additional information pertaining to effluent monitoring and reporting can be found in Section III of Appendix A.
9. The required DMRs shall be received by the agency no later than 20 days following the end of the reporting period in accordance with the following:
 - a. The agency encourages the permittee to utilize our electronic discharge monitoring report (eDMR) system. If the permittee uses the eDMR system, the permittee is not required to submit hard copies of the DMRs to the address listed below. However, if the permittee elects to not use the eDMR system, then the permittee is required to send hard copies to the address below. The permittee may contact the agency for more information about the eDMR system.

Director
Division of Water and Waste Management
601 57th Street, SE
Charleston, West Virginia 25304
Attention: Permitting Program
10. The permittee shall not use alternate DMRs from those attached to this permit unless prior approval from the Division is received.
11. The average daily design flow of the Publicly Owned Treatment Works for Outlet No. 001 has been established at 0.092 million gallons per day. The average monthly effluent flow reported on Discharge Monitoring Reports has reached or exceeded 0.082 million gallons per day (90 percent of the average design flow) during three (3) consecutive monthly periods, therefore, the permittee shall submit a Plan of Action to the Director. The Plan of Action shall present, at a minimum, an analysis of current hydraulic and organic loadings on the plant, an analysis of the future projected loadings, and a Schedule of Tasks to accomplish procedures necessary to maintain required treatment levels.

Section C - Other Requirements

12. Any future collection system extension or any new wastewater connection to the existing collection system shall require the permittee to contact the Director in order to obtain prior approval of said sewage collection system extension or connection. After consideration of the permittee's compliance with this permit and/or any active enforcement actions, the complexity of any collection system extension project, the collection system's capacity to carry additional flows and the available treatment capacity at the wastewater treatment facility, the Director may require the permittee to seek approval through a modification of the Permit. No additional connections shall be made without prior approval from the Director.
13. Certain characteristics of sewage, industrial wastes and other wastes cause pollution and are objectionable in all waters of the State. There are certain general conditions that are not to be allowed in all waters of the State. Therefore, the effluent discharge from the permittee's WWTP shall not cause violation of any of the following conditions not allowed in State waters as stated below (pursuant to Chapter 22B, Article 3):
 - a. Distinctly visible floating or settleable solids, suspended solids, scum, foam or oily slicks;
 - b. Deposits or sludge banks on the bottom;
 - c. Odors in the vicinity of the waters;
 - d. Taste or odor that would adversely affect the designated uses of the affected waters;
 - e. Materials in concentrations that are harmful, hazardous or toxic to man, animal or aquatic life;
 - f. Distinctly visible color;
 - g. Concentrations of bacteria that may impair or interfere with the designated uses of the affected waters;
 - h. Requiring an unreasonable degree of treatment for the production of potable water by modern water treatment processes as commonly employed; and
 - i. Any other condition, including radiological exposure, which adversely alters the integrity of the waters of the State including wetlands; no significant adverse impact to the chemical, physical, hydrologic, or biological components of aquatic ecosystems shall be allowed.
14. The permittee shall obtain approval for any periodic disposal of sewage sludge and/or solids generated by the wastewater treatment lagoons in conformance with the requirements of Appendix A, Part II, Section 5 of the permit entitled "Removed Substances". This approval shall be afforded in accordance with the provisions of Title 33, Series 2 of the WV Legislative Rules, accordingly and 40 CFR Part 503, as applicable.
15. Unless otherwise authorized under Section A of this permit, any discharge from any point other than a permitted treatment outfall is expressly prohibited. In the event there is a prohibited discharge from a sewer conveyance system or treatment plant bypass, the permittee shall follow the reporting requirements contained in Appendix A, Part IV, Section 2.
16. The permittee shall be required to test the sewage treatment plant's influent in order to calculate the percent (%) removal efficiencies for BOD5 and TSS parameters contained in Section A.001 of this permit. Influent sampling requirements include the following:
 - a. Percent removal shall be defined as a percentage expression of the removal efficiency across the wastewater treatment plant for a given pollutant parameter, as determined from the thirty day average values of the influent concentrations to the facility and the thirty day average effluent pollutant concentrations. Only influent and effluent samples taken concurrently as specified below shall be used for reporting.
 - b. Influent BOD5 and TSS samples shall be collected using the permittee's established sampling schedule at least one time per month (1/month) for the wastewater treatment facility.
 - c. The permittee shall collect representative BOD and TSS influent samples using their established sampling procedures over an eight (8) hour period.
 - d. Influent BOD5 and TSS sampling shall be performed over the same eight (8) hour time period as the effluent BOD5 and TSS sampling.

Section C - Other Requirements

17. The sampling and analysis required herein, and as prescribed in Section A.001 of this permit shall be conducted in accordance with sample collection, preservation, and analytical procedures specified in 40 CFR Part 136. The permittee shall assure that the test procedures being utilized have an appropriate method detection level (MDL) for each parameter. Parameters shall be analyzed using the most sensitive methods and detection levels commercially available and economically feasible with test procedures having MDLs below, or as close as possible to, the water quality standard for said parameters. Analytical test results obtained that are less than the MDL shall at this time be reported on the Discharge Monitoring Reports as less than the MDL (<MDL). Additionally, when calculating averages of analytical result values, the permittee shall use the actual analytical result when these results are greater than or equal to the MDL. Additionally, when calculating averages of analytical result values, the permittee shall use zero(0) when the actual analytical result is less than the MDL.

Effluent monitoring for the following pollutants shall be conducted using the most sensitive methods and detection levels commercially available and economically feasible. The following methods are to be used unless the permittee desires to use an EPA Approved Test Method with a listed lower method detection level. Regardless, it is recognized that detection levels can vary from analysis to analysis and that non-detect results at a different MDL for the specified test method would not constitute a permit violation.

Parameter	EPA Method No.	Method Detection Level (ug/l)
Copper, Total	200.8	0.5
Lead, Total	200.8	0.6
Zinc, Total	200.8	1.8

- a. The analytical test procedures, set forth in 40 CFR Part 136, prescribes colorimetric methods for certain parameters. The digestion process for the performance of total recoverable is not sufficient for the utilization of a colorimetric procedure. Therefore, colorimetric procedures shall not be acceptable for the analysis of parameters prescribed as total recoverable.
 - b. Any "not detected (ND)" results by the permittee must be "ND" at the method detection limit (MDL) for the test method used for that parameter and must be reported as less than the MDL used. The permittee may not report the result as zero, "ND", or report the result as less than a minimum level (ML), reporting limit (RL), or practical quantitation limit (PQL).
 - c. When averaging values of analytical results for DMR reporting purposes for monthly averages, the permittee should use actual analytical results when these results are greater than or equal to the MDL and should use zero (0) when these results are less than the MDL. If all analytical results are non-detect at the MDL (<MDL), then the permittee should use the actual MDL in the calculation for averaging and report the result as less than the average calculation.
18. Over the term of this permit, the permittee is allowed one (1) excursion of the maximum daily fecal coliform effluent limitation prescribed in Section A.001 (Final Requirements). The number of allowed excursions is based upon one (1) percent of the number of required self-monitoring events. Utilization of the excursion allowance is conditioned as follows.
- a. Excursion allowances are afforded only to self-monitoring results and only when self-monitoring activities assess compliance with the maximum daily effluent limitation by analysis of an individual grab sample. No excursion allowance can be applied to analytical results obtained by representatives of the Director in the performance of their compliance assessment activities. Additionally, representatives of the Director may assess compliance with the maximum daily effluent limitation by collection and analysis of an individual grab sample.
 - b. The excursion allowance is contingent upon the permittee's prompt return to compliance as evidenced by the next required fecal coliform self-monitoring event.
 - c. The result for which an excursion allowance is claimed shall be included in the calculation of the average monthly effluent value.
 - d. Should the excursion allowance be utilized by the permittee, said allowance must be reported as an attachment to the Discharge Monitoring Report. This attachment should state that an excursion allowance was taken in accordance with the conditions outlined above. The permittee shall maintain an on-site record of the excursion allowance utilized during the term of the permit.

Section C - Other Requirements

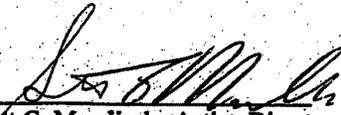
19. Aquatic vegetation such as duckweed and/or algae shall not inhibit the proper and normal biological activities of the aerated lagoons.
20. The sewage lagoons shall be properly bermed and drained so that surface water runoff shall not enter these lagoons.
21. Available sampling methods for total residual chlorine (TRC) are currently not sensitive enough to confirm compliance with the permit limitations imposed for the new treatment plant. Total residual chlorine (TRC) samples shall be taken, preserved and analyzed in accordance with the latest edition of 40 CFR Part 136. Because the permittee does not operate a certified wastewater laboratory at the plant site but still must comply with the instantaneous sample-type requirements, the permittee shall use an EPA Approved Method with at least a method detection level (MDL) of 0.100 mg/l. Any TRC sampling result reported as less than the MDL stated above shall be assumed to confirm compliance for purposes of permit compliance. Should a more sensitive EPA approved method become available for field analysis of TRC, the permittee shall perform TRC self-monitoring in accordance with the new method. If the new method is not sensitive enough to determine compliance with specified TRC limits, analytical results reported as "not detected" at the MDL of the new method will be deemed compliant for purposes of permit compliance.
22. The permittee shall continue to implement a program to identify and eliminate sources of inflow and infiltration. A written progress report shall be provided on a quarterly basis, as an attachment to the Discharge Monitoring Report, detailing what has been performed in relation to the implementation and accomplishments of the inflow and infiltration elimination program. Failure of the permittee to comply with this requirement shall result in subsequent administrative and/or legal action, as may be necessary in order to obtain the compliance sought herein.
23. The Division has been analyzing the impacts of nutrients upon water quality and whether there is a need to establish nutrient water quality standards. Therefore, the Division shall impose effluent sampling for Total Nitrogen and Total Phosphorus in order to assist in this analysis. The Division recognizes there is not an EPA approved method to directly test for Total Nitrogen. The Total Nitrogen value to be reported on the permittee's Discharge Monitoring Reports (DMRs) shall be the sum of the following parameters: Total Kjeldahl Nitrogen, Nitrate and Nitrite.

Page No.: 10 of 10
Permit No.: WV0085359

The herein-described activity is to be extended, modified, added to, made, enlarged, acquired, constructed or installed, and operated, used and maintained strictly in accordance with the terms and conditions of this permit, with the plans and specifications submitted with Permit Application No. WV0085359; with the plan of maintenance and method of operation thereof submitted with such application(s); and with any applicable rules and regulations promulgated by the Environmental Quality Board and the Secretary of the Department of Environmental Protection.

Failure to comply with the terms and conditions of this permit, with the plans and specifications submitted with Permit Application No. WV0085359; and with the plan of maintenance and method of operation thereof submitted with such application(s) shall constitute grounds for the revocation or suspension of this permit and the invocation of all the enforcement procedures set forth in Chapter 22, Article 11, or 15 of the Code of West Virginia.

This permit is issued in accordance with the provisions of Chapter 22, Article 11 and 12 and/or 15 of the Code of West Virginia and is transferable under the terms of Section 11 of Article 11.


Scott G. Mandirola, Acting Director

Appendix A

I. MANAGEMENT CONDITIONS:

1. Duty to Comply

- a) The permittee must comply with all conditions of this permit. Permit noncompliance constitutes a violation of the CWA and State Act and is grounds for enforcement action; for permit modification, revocation and reissuance, suspension or revocation; or for denial of a permit renewal application.
- b) The permittee shall comply with all effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

2. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit at least 180 days prior to expiration of the permit.

3. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment.

4. Permit Actions

This permit may be modified, revoked and reissued, suspended, or revoked for cause. The filing of a request by the permittee for permit modification, revocation and reissuance, or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

5. Property Rights

This permit does not convey any property rights of any sort or any exclusive privilege.

6. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified as required in Title 47, Series 10, Section 4.6 of the West Virginia Legislative Rules.

7. Transfers

This permit is not transferrable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.

8. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable specified time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, suspending, or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

9. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

10. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

- a) Enter upon the permittee's premises in which an effluent source or activity is located, or where records must be kept under the conditions of this permit;
- b) Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit;
- c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State Act, any substances or parameters at any location.

11. Permit Modification

This permit may be modified, suspended, or revoked in whole or in part during its term in accordance with the provisions of Chapter 22-11-12 of the Code of West Virginia.

12. Water Quality

Subject to 47 WV CSR 10.3.4.a, the effluent or effluents covered by this permit are to be of such quality so as not to cause violation of applicable water quality standards.

13. Outlet Markers

A permanent marker at the establishment shall be posted in accordance with Title 47, Series 11, Section 9 of the West Virginia Legislative Rules.

14. Liabilities

- a) Any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$25,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, 308 or 405 of the Clean Water Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.
- b) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 2 years, or by both.
- c) Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 2 years, or by both.
- d) Nothing in 1.14 a), b), and c) shall be construed to limit or prohibit any other authority the Director may have under the State Water Pollution Control Act, Chapter 22, Article 11.

II. OPERATION AND MAINTENANCE:**1. Proper Operation and Maintenance**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. Unless otherwise required by Federal or State law, this provision requires the operation of back-up auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit. For domestic waste treatment facilities, waste treatment operators as classified by the WV Bureau of Public Health Laws, W. Va. Code Chapter 16-1, will be required except that in circumstances where the domestic waste treatment facility is receiving any type of industrial waste, the Director may require a more highly skilled operator.

2. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

3. Bypass**a) Definitions**

- (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility; and
- (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of II.3.c) and II.3.d) of this permit.

- (1) If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass;
- (2) If the permittee does not know in advance of the need for bypass, notice shall be submitted as required in IV.2.b) of this permit.

d) Prohibition of bypass

- (1) Bypass is permitted only under the following conditions, and the Director may take enforcement action against a permittee for a bypass, unless;
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - (C) The permittee submitted notices as required under II.3.c) of this permit.
- (2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in II.3.d.(1) of this permit.

4. Upset**a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.****b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitation if the requirements of II.4.c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.****c) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:**

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) The permitted facility was at the time being properly operated;
- (3) The permittee submitted notice of the upset as required in IV.2.b) of this permit.
- (4) The permittee complied with any remedial measures required under I.3. of this permit.

d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.**5. Removed Substances**

Where removed substances are not otherwise covered by the terms and conditions of this permit or other existing permit by the Director, any solids, sludges, filter backwash or other pollutants (removed in the course of treatment or control of wastewaters) and which are intended for disposal within the State, shall be disposed of only in a manner and at a site subject to the approval by the Director. If such substances are intended for disposal outside the State or for reuse, i.e., as a material used for making another product, which in turn has another use, the permittee shall notify the Director in writing of the proposed disposal or use of such substances, the identity of the prospective disposer or users, and the intended place of disposal or use, as appropriate.

III. MONITORING AND REPORTING

1. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. Reporting

- a) Permittee shall submit, according to the enclosed format, a Discharge Monitoring Report (DMR) indicating in terms of concentration, and/or quantities, the values of the constituents listed in Part A analytically determined to be in the plant effluent(s). DMR submissions shall be made in accordance with the terms contained in Section C of this permit.
- b) Enter reported average and maximum values under "Quantity" and "Concentration" in the units specified for each parameter, as appropriate.
- c) Specify the number of analyzed samples that exceed the allowable permit conditions in the columns labeled "N.E." (i.e., number exceeding).
- d) Specify frequency of analysis for each parameter as number of analyses/specified period (e.g., 3/month is equivalent to 3 analyses performed every calendar month). If continuous, enter "Cont.". The frequency listed on format is the minimum required.

3. Test Procedures

Samples shall be taken, preserved and analyzed in accordance with the latest edition of 40 CFR Part 136, unless other test procedures have been specified elsewhere in this permit.

4. Recording of Results

For each measurement or sample taken pursuant to the permit, the permittee shall record the following information.

- a) The date, exact place, and time of sampling or measurement;
- b) The date(s) analyses were performed;
- c) The individual(s) who performed the sampling or measurement;
- d) The individual(s) who performed the analyses; if a commercial laboratory is used, the name and address of the laboratory;
- e) The analytical techniques or methods used, and
- f) The results of such analyses. Information not required by the DMR form is not to be submitted to this agency, but is to be retained as required in III.6.

5. Additional Monitoring by Permittee

If the permittee monitors any pollutant at any monitoring point specified in this permit more frequently than required by this permit, using approved test procedures or others as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report Form. Such increased frequency shall also be indicated. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

6. Records Retention

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for the permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

7. Definitions

- a) "Daily discharge" means the discharge of a pollutant measured during a calendar day or within any specified period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
- b) "Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.
- c) "Maximum daily discharge limitation" means the highest allowable daily discharge.
- d) "Composite Sample" is a combination of individual samples obtained at regular intervals over a time period. Either the volume of each individual sample is proportional to discharge flow rates or the sampling interval (for constant volume samples) is proportional to the flow rates over the time period used to produce the composite. The maximum time period between individual samples shall be two hours.
- e) "Grab Sample" is an individual sample collected in less than 15 minutes.
- f) "is" = immersion stabilization - a calibrated device is immersed in the effluent stream until the reading is stabilized.
- g) The "daily average temperature" means the arithmetic average of temperature measurements made on an hourly basis, or the mean value plot of the record of a continuous automated temperature recording instrument, either during a calendar month, or during the operating month if flows are of shorter duration.
- h) The "daily maximum temperature" means the highest arithmetic average of the temperatures observed for any two (2) consecutive hours during a 24 hour day, or during the operating day if flows are of shorter duration.
- i) The "monthly average fecal coliform" bacteria is the geometric average of all samples collected during the month.
- j) "Measured Flow" means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or which a relationship to absolute volume has been obtained.
- k) "Estimate" means to be based on a technical evaluation of the sources contributing to the discharge including, but not limited to pump capabilities, water meters and batch discharge volumes.
- l) "Non-contact cooling water" means the water that is contained in a leak-free system, i.e., no contact with any gas, liquid, or solid other than the container for transport; the water shall have no net poundage addition of any pollutant over intake water levels, exclusive of approved anti-fouling agents.

IV. OTHER REPORTING

1. Reporting Spills and Accidental Discharges

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties established pursuant to Title 47, Series 11, Section 2 of the West Virginia Legislative Rules promulgated pursuant to Chapter 22, Article 11. Attached is a copy of the West Virginia Spill Alert System for use in complying with Title 47, Series 11, Section 2 of the Legislative rules as they pertain to the reporting of spills and accidental discharges.

2. Immediate Reporting

- a) The permittee shall report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the Agency's designated spill alert telephone number. A written submission shall be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- b) The following shall also be reported immediately:
 - (1) Any unanticipated bypass which exceeds any effluent limitation in the permit;
 - (2) Any upset which exceeds any effluent limitation in the permit; and
 - (3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported immediately. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.
- c) The Director may waive the written report on a case-by-case basis if the oral report has been received in accordance with the above.
- d) Compliance with the requirements of IV.2 of this section, shall not relieve a person of compliance with Title 47, Series 11, Section 2.

3. Reporting Requirements

- a) **Planned changes.** The permittee shall give notice to the Director of any planned physical alterations or additions to the permitted facility which may affect the nature or quantity of the discharge. Notice is required when:
 - (1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in Section 13.7.b of Series 10, Title 47; or
 - (2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under IV.2 of this section.
- b) **Anticipated noncompliance.** The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- c) **In addition to the above reporting requirements, all existing manufacturing, commercial, and silvicultural discharges must notify the Director in writing as soon as they know or have reason to believe:**
 - (1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, or any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (A) One hundred micrograms per liter (100 ug/l);
 - (B) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitro phenol; and for 2-methyl 4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - (C) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.4.b.9 of Series 10, Title 47.
 - (D) The level established by the Director in accordance with Section 6.3.g of Series 10, Title 47.
 - (2) That any activity has occurred or will occur which would result in any discharge (on a non-routine or infrequent basis) of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (A) Five hundred micrograms per liter (500 ug/l);
 - (B) One milligram per liter (1 mg/l) for antimony;
 - (C) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 4.4.b.7 of Series 10, Title 47;
 - (D) The level established by the Director in accordance with Section 6.3.g of Series 10, Title 47.
 - (3) That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 10, Title 47 and which will result in the discharge on a routine or frequent basis of that toxic pollutant at levels which exceed five times the detection limit for that pollutant under approved analytical procedure.
 - (4) That they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product of any toxic pollutant which was not reported in the permit application under Section 4.4.b.9 of Series 10, Title 47 and which will result in the discharge on a non-routine or infrequent basis of that toxic pollutant at levels which exceed ten times the detection limit for that pollutant under approved analytical procedure.

4. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under the above paragraphs at the time monitoring reports are submitted. The reports shall contain the information listed in IV.2.a). Should other applicable noncompliance reporting be required, these terms and conditions will be found in Section C of this permit.

WRD 2A-82

STATE OF WEST VIRGINIA
 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
 DISCHARGE MONITORING REPORT

Final Limitations
 Year Round

FACILITY NAME: (WWTP Discharge) FORT GAY TOWN OF _____
 LOCATION OF FACILITY: FORT GAY, Wayne County _____
 PERMIT NO.: WV0085359 _____ OUTLET NO.: 001 _____
 WASTELOAD FOR THE MONTH OF: _____
 CERTIFIED LABORATORY NAME: _____
 CERTIFIED LABORATORY ADDRESS: _____
 INDIVIDUAL PERFORMING ANALYSIS: _____

Parameter	Reported	Permit Limits	N/A	CEL		CEL		Frequency	Sampling
				Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		
00600 (ML-A) RF-B Nitrogen, Total (as N) Year Round	Reported	Permit Limits	N/A	N/A	N/A	mg/l	1/quarter	8 hr comp	
00665 (ML-A) RF-B Phosphorus, Total Year Round	Reported	Permit Limits	N/A	N/A	N/A	mg/l	1/quarter	8 hr comp	
50060 (ML-A) RF-A Chlorine, Total Residual Year Round	Reported	Permit Limits	N/A	0.028 Avg. Monthly	0.057 Max. Daily	mg/l	1/week	Grab	
01119 (ML-A) RF-A Copper, Total Recoverable Year Round	Reported	Permit Limits	N/A	0.007 Avg. Monthly	0.014 Max. Daily	mg/l	1/month	8 hr comp	
01114 (ML-A) RF-A Lead, Total Recoverable Year Round	Reported	Permit Limits	N/A	0.0026 Avg. Monthly	0.0052 Max. Daily	mg/l	1/month	8 hr comp	
01094 (ML-A) RF-A Zinc, Total Recoverable Year Round	Reported	Permit Limits	N/A	0.06 Avg. Monthly	0.12 Max. Daily	mg/l	1/month	8 hr comp	
						N/A			
						N/A			
						N/A			

* CEL = Compliance Evaluation Level

NAME OF PRINCIPAL EXECUTIVE OFFICER: _____
 TITLE: _____
 SIGNATURE: _____
 DATE: _____

**EMERGENCY RESPONSE SPILL ALERT SYSTEM
WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**

REQUIREMENTS:

Title 47, Series 11, Section 2 of the West Virginia Legislative Rules, Environmental Protection, Water Resources - Waste Management, Effective July 1, 1994.

RESPONSIBILITY FOR REPORTING:

Each and every person who may cause or be responsible for any spill or accidental discharge of pollutants into the waters of the State shall give immediate notification to the Division of Water and Waste Management's Emergency Notification Number, 1-800-642-3074. Such notification shall set forth insofar as possible and as soon thereafter as practical the time and place of such spill or discharge, type or types and quantity or quantities of the material or materials therein, action or actions taken to stop such spill or discharge and to minimize the polluting effect thereof, the measure or measures taken or to be taken in order to prevent a recurrence of any such spill or discharge and such additional information as may be requested by the Division of Water and Waste Management. This also applies to spills to the waters of the State resulting from accidents to common carriers by highway, rail and water.

It shall be the responsibility of each industrial establishment or other entity discharging directly to a stream to have available the following information pertaining to those substances that are employed or handled in its operation in sufficiently large amounts as to constitute a hazard in case of an accidental spill or discharge into a public stream:

- (1) Potential toxicity in water to man, animals and aquatic life;
- (2) Details on analytical procedures for the quantitative estimation of such substances in water and
- (3) Suggestions on safeguards or other precautionary measures to nullify the toxic effects of a substance once it has gotten into a stream.

Failure to furnish such information as required by Section 14, Article 11, Chapter 22, Code of West Virginia may be punishable under Section 24, Article 11, Chapter 22, and/or Section 22, Article 11, Chapter 22, Code of West Virginia.

It shall be the responsibility of any person who causes or contributes in any way to the spill or accidental discharge of any pollutant or pollutants into State waters to immediately take any and all measures necessary to contain such spill or discharge. It shall further be the responsibility of such person to take any and all measures necessary to clean-up, remove and otherwise render such spill or discharge harmless to the waters of the State.

When the Director determines it necessary for the effective containment and abatement of spills and accidental discharges, the Director may require the person or persons responsible for such spill or discharge to monitor affected waters in a manner prescribed by the Director until the possibility of any adverse effect on the waters of the State no longer exists.

VOLUNTARY REPORTING BY LAW OFFICERS, U. S. COAST GUARD, LOCK MASTERS AND OTHERS:

In cases involving river and highway accidents where the responsible party may or may not be available to report the incident, law officers, U. S. Coast Guard, Lock Masters and other interested person(s) should make the report.

WHO TO CONTACT:

Notify the following number: 1-800-642-3074

INFORMATION NEEDED:

- Source of spill or discharge
- Location of incident
- Time of incident
- Material spilled or discharged
- Amount spilled or discharged
- Toxicity of material spilled or discharged
- Personnel at the scene
- Actions initiated
 - Shipper/Manufacturer identification
- Railcar/Truck identification number
- Container type

WV/NPDES Permit No.: WV0085359

NOTICE TO PERMITTEES

The 1999 regular session of the West Virginia legislature revised the Water Pollution Control Act, Chapter 22, Article 11, Section 10 of the Code of West Virginia relating to fees associated with permits. This section of the Code requires all holders of a State water pollution control permit or a national pollutant discharge elimination system permit to be assessed an annual permit fee, based upon rules promulgated by the Secretary of the Department of Environmental Protection. The Secretary has promulgated a final rule in accordance with the code revision to this effect and these rules were effective May 4, 2000. The rules establish an annual permit fee based upon the relative potential to degrade the waters of the State which, in most instances, relate to volume of discharge. However, for sewage facilities, the annual permit fee is based upon the number of customers served by the facility. You may contact the Secretary of State's Office, State Capitol Building, Charleston, WV 25305, to obtain a copy of the rules. The reference is Title 47, Legislative Rules, Department of Environmental Protection, Division of Water Resources, Series 26 Water Pollution Control Permit Fee Schedules.

Based upon the volume of discharge for which your facility is currently permitted, the number of customers served by your facility or for the category you fall within, pursuant to Section 7 of Title 47, Series 26, your annual permit fee is \$100.00. This fee is due no later than the anniversary date of permit issuance in each year of the term of the permit or in the case of coverage under a general permit, the fee is due no later than the anniversary date of your coverage under the general permit. You will be invoiced by this agency at the appropriate time for the fee. Failure to submit the annual fee within ninety(90) days of the due date will render your permit void upon the date you are mailed a certified written notice to that effect.

RIGHT OF APPEAL

Notice is hereby given of your right to appeal the terms and conditions of this permit which you are aggrieved by to the Environmental Quality Board by filing a NOTICE OF APPEAL on the form prescribed by such Board for this purpose, with the Board, in accordance with the provisions of Section 21, Article 11, Chapter 22 of the Code of West Virginia within thirty (30) days after the date of receipt of the above permit.

Appendix C

Appendix C: Capital Improvement Plan Schedule

1. Pump Station Operation. Fort Gay shall complete the improvements required in Paragraph 23.a of the Consent Decree by the deadlines indicated:

A. Tier I Pump Stations:

Pump Station	Deadline
Orchard Street Pump Station	_____
Cedar Heights A Pump Station	_____
Cedar Heights B Pump Station	_____
Route 37 Pump Station	_____

B. Tier II Pump Stations:

Pump Station	Deadline
Bridgemart Pump Station	_____
Cass Street A Pump Station	_____
Cass Street B Pump Station	_____
Cass Street C Pump Station	_____
Apperson Street Pump Station	_____

2. Electrical Backup. Fort Gay shall complete the improvements required in Paragraph 23.d of the Consent Decree by _____.

3. Security. Fort Gay shall complete the improvements required in Paragraph 23.e of the Consent Decree by:

A. Tier I Pump Stations:

Pump Station	Deadline
Orchard Street Pump Station	_____
Cedar Heights A Pump Station	_____
Cedar Heights B Pump Station	_____
Route 37 Pump Station	_____

B. Tier II Pump Stations:

Pump Station	Deadline
Bridgemart Pump Station	_____
Cass Street A Pump Station	_____
Cass Street B Pump Station	_____
Cass Street C Pump Station	_____
Apperson Street Pump Station	_____

4. Flow Monitoring, Metering, and Recording Requirements. Fort Gay shall complete the improvements required in Paragraph 23.f of the Consent Decree by _____

_____.