

B. Swiger

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

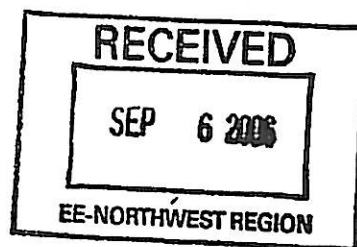
ALLYN G. TURNER, DIRECTOR,
DIVISION OF WATER AND WASTE,
MANAGEMENT, WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Plaintiff,

v.

CITY OF SALEM,

Defendant.



Civil Action No. 04-C-210-3
(Judge Matish)

CONSENT DECREE

WHEREAS, Plaintiff Allyn G. Turner, Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection ("WVDEP") filed the Complaint herein alleging that the Defendant had violated the West Virginia Water Pollution Control Act ("Act"), West Virginia Code §§ 22-11-1 through -28, and West Virginia/National Pollutant Discharge Elimination System ("WV/NPDES") Permit No. WV0020257 ("Permit") at its waste water treatment facility in Harrison County, West Virginia; and

WHEREAS, Defendant has denied any liability for the violations in the Complaint; and

WHEREAS, Defendant owns and operates a waste water treatment facility that discharges into Salem Fork of Ten Mile Creek of the West Fork of the Monongahela River, and which facility the WVDEP alleges is in violation of the Act and WV/NPDES Permit No. WV0020257; and

WHEREAS, the parties having agreed that settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter; and

NOW, THEREFORE, It is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter and the parties hereto pursuant to W. Va. Code § 22-11-22. Venue is proper in this Circuit Court pursuant to W. Va. Code § 22-11-22, because Defendant is located and doing business in this judicial Circuit, and because the violations that are the subject of this action occurred in this judicial Circuit.

II. APPLICATION OF CONSENT DECREE

This Consent Decree applies to, and is binding upon, the Defendant in this action, its officers, directors, agents, servants, employees, contractors, subcontractors, successors, assigns, and all persons, firms, and corporations in active concert or participation with them.

III. INJUNCTIVE RELIEF

The Court enjoins the Defendant from operating or maintaining its waste water treatment facility in a manner that will result in further violations of the Act and its

Permit, and orders the Defendant to comply with all terms and conditions in its WV/NPDES permit.

The Court further orders the Defendant to expend the funds necessary to operate and maintain its treatment facility in compliance with the Act and its Permit. In this regard, the Defendant shall undertake a program to attain and thereafter maintain compliance with the Act and its Permit. This program shall include undertaking and completing the following tasks on or before the deadlines specified in the following compliance schedule:

<u>TASK</u>	<u>DEADLINE DATE</u>
Dye test drop inlets	August 31, 2005
Prepare and start implementation of Nine Minimum Controls (NMCs)	April 30, 2006
Review existing records, reports and as built drawings	March 30, 2006
Conduct smoke testing and inspection of manholes	May 30, 2006
Conduct sampling program	May 30, 2006
Identify illegal connections	May 30, 2006
Complete visual and video inspection of sewer lines	August 30, 2006
Prepare and submit approvable Water Quality Study	December 31, 2006

Prepare and submit approvable Long Term Control Plan	March 30, 2007
Prepare and submit Preliminary Engineering Report for a project to eliminate dry weather overflows	March 30, 2007
Prepare and submit Plans and Specifications for construction of a project to eliminate dry weather overflows	September 30, 2007
Submit document indicating NMCs have been fully implemented	April 30, 2007
Start construction of a project to eliminate dry weather overflows	April 30, 2008
Complete construction of a project to eliminate dry weather overflows	April 30, 2009
Prepare and submit Preliminary Engineering Report for a project to comply with CSO Policy	September 30, 2008
Prepare and submit Plans and Specifications for construction of a project to comply with CSO Policy	March 31, 2010
Start construction of a project to comply with CSO Policy	March 31, 2011
Complete construction of a project to comply with CSO Policy	November 30, 2012

IV. CIVIL PENALTY

In settlement of the Plaintiff's claims in the Complaint relating to reported violations of the Act and WV/NPDES Permit No. WV0020257, the Defendant shall pay a civil penalty of \$25,000 payable in twenty-five (25) equal installments of \$1,000, due and

payable beginning thirty (30) days after this Consent Decree is entered by the Court and monthly thereafter from the date of entry of the Consent Decree. The Defendant shall tender each payment to the Chief Inspector, Environmental Enforcement, West Virginia Department of Environmental Protection, 601 57th Street SE, Charleston, West Virginia 25304, by check payable to the "West Virginia Department of Environmental Protection" for deposit in the Water Quality Management Fund.

V. STIPULATED PENALTIES

The Defendant shall be liable for stipulated penalties to the WVDEP for failure to comply with any of the requirements of this Consent Decree. Stipulated penalties shall accrue per violation per day as follows:

<u>Period of Noncompliance</u>	<u>Penalty</u>
1 st through 15 th day	\$250 per day per violation
16 th through 30 th day	\$500 per day per violation
After 30 th day	\$1,000 per day per violation

The Defendant shall pay the stipulated penalty assessed for any violation of this Consent Decree within 15 days of receipt of written demand by Plaintiff, unless the Defendant moves the Court within that 15-day period for a hearing thereon and thereafter demonstrates to the satisfaction of the Court that the failure to meet any deadline or requirement in this Consent Decree was due to circumstances entirely beyond the control of the Defendant.

The stipulated penalties provided herein pertain only to the requirements of this Consent Decree and are in addition to other remedies and sanctions available to the WVDEP by reason of the Defendant's failure to comply with the requirements of the Consent Decree, the Act, or its Permit. All payments to the WVDEP under this Section shall be paid by certified or cashier's check payable to the "West Virginia Department of Environmental Protection" for deposit in the Water Quality Management Fund and shall be sent to the Chief Inspector, Environmental Enforcement, to the address specified in Section IV above.

VI. QUARTERLY REPORTS

From the date of entry this Consent Decree, the Defendant shall submit quarterly compliance reports to the WVDEP until all remedial measures listed in Section III above are completed. The compliance reports shall indicate what has been accomplished since the submittal of the last compliance report, whether Defendant is on the schedule required by this Consent Decree and, if not on schedule, an explanation of why it is behind schedule, how far it is behind schedule, and what measures are being taken to get back on schedule. Reports shall be sent to the Chief Inspector, Environmental Enforcement, to the address specified in Section IV above, and to the West Virginia Department of Environmental Protection, Environmental Enforcement, 2031 Pleasant Valley Road, Suite No. 1, Fairmont, West Virginia 26554.

VII. FUNDING

Performance of the terms of this Consent Decree by the Defendant is not conditioned on the receipt of any grant or loan funds. In addition, performance is not excused by the lack of any grant or loan funds, or by the processing of any application for the same.

Notwithstanding the foregoing, pursuant to Section X below, in the event the Defendant cannot complete performance of the terms of this Consent Decree, or any task set forth herein, due to a denial of a good-faith funding request from or on behalf of the Defendant, and the Defendant demonstrates to the satisfaction of the WVDEP that such denial is not due to lack of diligence on the part of the Defendant, the Plaintiff will agree to extend the deadlines in this Consent Decree that cannot be met due to such denial.

VIII. FORCE MAJEURE

If any event occurs which causes or may cause a violation of any provision of this Consent Decree by the Defendant, it shall notify the plaintiff in writing within ten (10) days of the date on which the Defendant has knowledge or should have had knowledge that the event may or will cause a violation. The notice shall describe the anticipated duration of the violation, the precise cause or causes of the violation, the measures taken and to be taken by the Defendant to minimize the violation, and the timetable by which those measures will be implemented. The Defendant will adopt all measures to avoid or

minimize any such violation. The Defendant shall make all efforts to identify events that cause or may cause a violation of this Consent Decree.

If the WVDEP agrees that any violation of this Consent Decree is caused solely by circumstances beyond the control of the Defendant, the Defendant shall be excused as to that violation for the period of time the violation continues due to such circumstances. The Defendant's time for performance shall be extended for a period not exceeding the delay actually resulting from such circumstances. In the event the WVDEP does not agree, the Defendant may submit the matter to this Court for resolution. The burden of proving that any delay was caused solely by circumstances beyond the control of the Defendant and the length of such delay shall rest with the Defendant. Failure by the Defendant to comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved, and shall constitute a waiver of the Defendant's right under this provision to obtain an extension of its obligations based on that incident.

Compliance with any requirement of this Consent Decree, by itself, shall not constitute compliance with any other requirement. The Defendant must make an individual showing or proof regarding each delayed incremental step or other requirement for which an extension is sought.

Unanticipated or increased costs, by themselves, shall not serve as a basis for relief under this Section. Compliance with the provisions of this Consent Decree is not dependent on the receipt of State or Federal grants or payments.

IX. RETENTION OF JURISDICTION

The Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Decree.

X. MODIFICATIONS

This Consent Decree contains the entire agreement between the Parties. It may not be enlarged, modified, or altered, unless such modifications are made in writing and approved by the Parties and the Court.

XI. PERMITS AND OTHER LAWS AND REGULATIONS

This Consent Decree is not, and shall not be interpreted to be, a permit or modification of a permit under the Act, nor shall it relieve Defendant of any other obligation imposed by the Act, its WV/NPDES permit, or any permit issued under the Act, except as expressly provided herein, nor shall it in any way relieve Defendant of its obligation to comply with any other federal or state law or any rule or regulation in any way related to the substance of this Consent Decree. Any new permit or modification must be obtained in accordance with applicable federal and state laws and rules and regulations.

XII. PUBLIC NOTICE

The parties acknowledge and agree that final approval of this Consent Decree is subject to public notice and comment as provided in 47 C.S.R. §10-16.2.c. The public shall have at least thirty (30) days in which to make any comments on this Consent Decree and the WVDEP reserves the right to withhold or withdraw its consent if the comments indicate that this Consent Decree is inappropriate, improper, or inadequate. The Defendant consents to entry of this Consent Decree without further notice. If for any reason, this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of the WVDEP and the terms of the agreement may not be used as evidence in any litigation between the parties.

XIII. EFFECTIVE DATE

The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XIV. TERMINATION

Termination of this Consent Decree shall be by order of the Court upon application by any party, provided all of the following conditions have been met: (1) The Defendant has achieved complete compliance with all requirements of this Consent Decree; (2) The Defendant has paid all civil and stipulated penalties required herein; and (3) All motions and other proceedings concerning this Consent Decree have been completed and are no

longer subject to further judicial review and all relief resulting from such motions or other proceedings have been fully satisfied.

XV. PARTIES BOUND BY CONSENT DECREE

This Consent Decree is binding on the Defendant's successors and assigns, and shall remain in effect until the Defendant or its successors or assigns demonstrate, as required by Section XIV herein, they have complied with all of the terms of this Consent Decree.

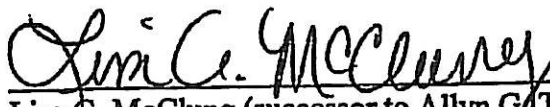
XVI. SIGNATORIES AUTHORIZED

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 bind legally the party to the Consent Decree so represented by him or her.


It is so ORDERED this ~~_____~~ day of ~~_____~~ ^{the Clerk of this Court remove this} 2006. ^{case from the Active docket of this Court and}
^{to send certified copies to each of the parties &}
^{Attorneys listed below.}

Enter 05/28/06 
JUDGE

We hereby consent to the entry of this Decree.

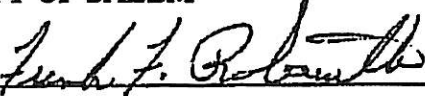

Lisa G. McClung (successor to Allyn G. Turner),
Director, Division of Water
and Waste Management West Virginia
Department of Environmental Protection

7/18/06
Date



Joseph A. Lazell (WVSB No. 2165)
Office of Legal Services/WVDEP
601 57th Street, SE
Charleston, WV 25304
(304) 926.0499, Ext. 1448
Counsel for Plaintiff

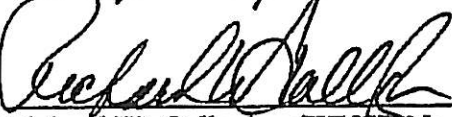
7/18/06
Date

CITY OF SALEM

By 

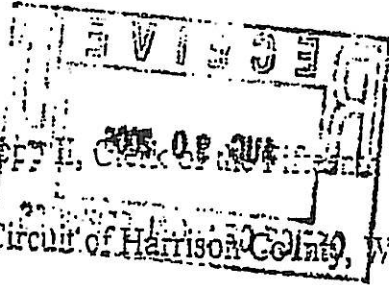
7-12-06
Date

Its 


Richard W. Gallagher (WVSB No. 1327)
Robert E. Lannan (WVSB No. 2139)
Robinson & McElwee
P. O. Box 128
Clarksburg, WV 26302-0128
(304) 622.5022
Counsel for Defendant

7-11-06
Date

COUNTY OF HARRISON, TO-WIT:



I, Donald L. Kapp II, Clerk of the Fifteenth Judicial Circuit and the 18th Family Court Circuit of Harrison County, West Virginia, hereby certify the

foregoing to be a true copy of the ORDER entered in the above styled action on the 28 day of August, 2006.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix

Seal of the Court this 28 day of August, 20 06

Donald L. Kapp II
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia