



---

west virginia department of environmental protection

---

Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: (304) 926-0495  
Fax: (304) 926-0463

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

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

TO: City of Salem  
Honorable Robert Samples, Mayor  
PO Box 352  
Salem, WV 26426

DATE: March 25, 2015

ORDER NO.: 8235

**INTRODUCTION**

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq. to City of Salem (hereinafter "Salem").

**FINDINGS OF FACT**

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

1. Salem operates a wastewater treatment plant located in Salem, Harrison County, West Virginia. Salem was reissued WV/NPDES Water Pollution Control Permit No. WV0020257 on June 30, 2005, April 30, 2009, and April 30, 2014.
2. On August 28, 2006, a Consent Decree was issued to Salem by the Circuit Court of Harrison County in response to Civil Action No. 04-C-210-3, brought by West Virginia Department of Environmental Protection (WVDEP). The Consent Decree (attached) required that Salem complete certain remedial tasks in accordance with a provided schedule (Section III). In addition, the Consent Decree required submittal of quarterly compliance reports to WVDEP until all remedial measures had been completed (Section VI).

3. On August 22, 2007, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and WV Legislative Rules were observed and documented:
  - a. 47CSR2 Section 3.2.b - Salem caused conditions not allowable in waters of the State by creating sludge banks in Salem Fork of Ten Mile Creek.
  - b. Chapter 22-11-1 et seq. - Salem failed to comply with all of the provisions of the aforementioned Consent Decree.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W-AWL-81407-001 and W-AWL-81407-002 were issued to Salem.

4. On June 10, 2010, WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel observed and documented that Salem failed to provide a written progress report on a quarterly basis detailing actions performed in relation to the Inflow & Infiltration (I&I) elimination program. During the inspection, the following violation of WV State Code was observed and documented:
  - a. Chapter 22-11-1 et seq. - Salem failed to comply with Section VI of the aforementioned Consent Decree. Specifically, Salem failed to submit quarterly compliance reports for any quarter of 2009 and the first quarter of 2010.

As a result of the aforementioned violations, NOV Nos. W-NW-JME-061010-001 and W-NW-JME-061010-002 were issued to Salem.

5. On March 18, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and Salem's WV/NPDES permit were observed and documented:
  - a. Appendix A.IV.2 - The permittee failed to immediately report a large spill from the cyclone grit remover bagger system.
  - b. Section E.4 - The permittee failed to provide documentation of current noncompliance of industrial users to WVDEP after thirty-two (32) permit exceedances were reported from industrial users.
  - c. Section E.2.c.6 - The following industrial user Discharge Monitoring Reports (DMRs) were not submitted within twenty (20) days following the end of the reporting period:
    - i. IU03 - June, July, August, October, November, and December 2013; January and February 2014.
    - ii. IU08 - February 2014.
    - iii. IU09 - May, August, October, and November 2013; February 2014.
  - d. Appendix A.II.1 - The permittee failed to properly operate and maintain the facility. Specifically, the permittee's ultrasonic flow meter was out of service, and the bar-screens for Sanitary Sewer Overflow (SSO) Nos. 001 and 002 were not maintained.

- e. Section A.001 - A review of DMRs from February 2013 through February 2014 revealed seventeen (17) exceedances of Salem's permit parameters. These exceedances can be further defined as:
  - i. Minor violations- seven (7)
  - ii. Moderate violations- five (5)
  - iii. Major violations- five (5)
- f. Section C.22- The permittee failed to submit quarterly I&I reports since 2008.
- g. Chapter 22-11-1 et seq. - The permittee failed to comply with all of the provisions of the aforementioned Consent Decree.
  - i. Section III of the Consent Decree- With the exception of preparing and submitting a preliminary engineering report for a project to comply with Combined Sewer Overflow (CSO) policy, none of the eighteen (18) remedial tasks were completed in accordance with the provided schedule. Salem represented that the requirement to dye test drop inlets was partially completed, although not within the timeframe specified by the Consent Decree. A quarterly report submitted for the 4<sup>th</sup> Quarter of 2008 stated that Salem had been divided into six (6) quadrants for the purpose of completing and documenting dye testing. The report stated that dye testing had been completed for Quadrant Five (5), and Salem was in the process of dye testing Quadrant One (1). During this inspection, Ronnie Davis, Public Works Supervisor for Salem, represented that Salem also had documentation of dye testing for Quadrants One (1) and Four (4).
  - ii. Section VI of the Consent Decree- Salem failed to submit any quarterly compliance reports.
- h. Section C.13 - Salem discharged from a point other than a permitted treatment outfall. SSO records reviewed from March 2013 through February 2014 revealed five (5) discharges from SSO No. 001 and thirteen (13) discharges from SSO No. 002.

As a result of the aforementioned violations, NOV No. CM-TJA-031914-001 was issued to Salem.

- 6. On September 4, 2014, WVDEP personnel conducted a review of DMRs from August 2012 through July 2014. During the review, the following exceedances were observed and documented (Table One):
  - a. Section A.001 – Thirty-three (33) exceedances of Salem's WV/NPDES permit parameters were observed and documented. These exceedances can be further defined as:
    - i. Minor violations- sixteen (16)
    - ii. Moderate violations- nine (9)
    - iii. Major violations- eight (8)
- 7. On September 12, 2014, WVDEP personnel conducted a record review of SSO records from August 2012 through July 2014. During the review, the following violations of West Virginia Legislative Rule were observed and documented:

- a. Section C.13 - Salem discharged from a point other than a permitted treatment outfall. Specifically, a total of thirty-six (36) discharges had occurred from SSO Nos. 001 and 002.
8. On March 19, 2015, WVDEP personnel and representatives of Salem met to discuss the terms and conditions of this Order.
  9. On March 23, 2015, WVDEP personnel conducted a review of DMRs from August 2014 through February 2015. During the review, the following violations of Salem's WV/NPDES permit were observed and documented:
    - a. Section A.001 – Eight (8) exceedances of Salem's WV/NPDES permit parameters were observed and documented (Table One). These exceedances are defined as:
      - i. Minor violations- four (4)
      - ii. Moderate violations- four (4)
    - b. Section E.4 - The permittee failed to provide documentation of current noncompliance of industrial users to WVDEP after twenty (20) permit exceedances were reported from industrial users.
    - c. Section E.2.c.6 - The following industrial user DMRs were not submitted within twenty (20) days following the end of the reporting period:
      - i. IU03 – December 2014 and February 2015.
      - ii. IU08 – December 2014 and February 2015.
      - iii. IU09 – February 2015.
    - d. Section C.6 – February 2015 DMRs for Outlet No. 001 were not submitted within twenty (20) days following the end of the reporting period.

#### **ORDER FOR COMPLIANCE**

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

1. Salem shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit, pertinent laws and rules, and provisions of the aforementioned Consent Decree.
2. Within thirty (30) days of the effective date of this Order, Salem shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Salem will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0020257 and Order No. 8235. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
NW Regional Environmental Enforcement Office  
2031 Pleasant Valley Road  
Fairmont, WV 26554**

A copy of this plan shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

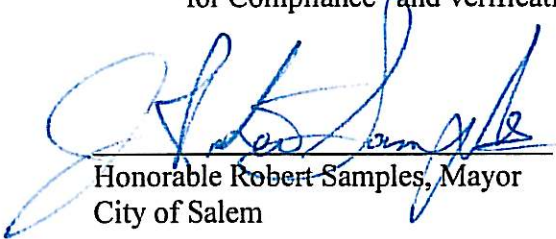
3. Because of Salem's West Virginia Code, Legislative Rule and permit violations, Salem shall be assessed a civil administrative penalty of eighty-two thousand three hundred ten dollars (\$82,310) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. Salem hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Salem agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Salem does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Salem other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Salem shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Salem becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Salem shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Salem intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Salem (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Salem of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Salem to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Salem, its successors and assigns.

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

  
Honorable Robert Samples, Mayor  
City of Salem

4-14-15  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

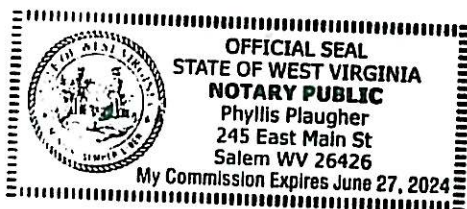
\_\_\_\_\_  
Date

revised March 2013

**RECEIVED**

APR 17 2015

ENVIRONMENTAL  
ENFORCEMENT



*Phyllis Plaughter*  
*my Commission Expires*  
*June 27, 2024*

Table One:  
City of Salem DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 8/2012 through 2/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
3/2014	BOD5	Lbs/Day	57.75	75.2	30%	X	-	-
5/2014	BOD5	Lbs/Day	28.88	52.7	82%	-	X	-
1/2015	BOD5	mg/L	13	14.1	8%	X	-	-
2/2013	TSS	Lbs/Day	100.14	100.2	0.1%	X	-	-
3/2014	TSS	Lbs/Day	100.14	110	10%	X	-	-
5/2014	TSS	Lbs/day	100.14	146	46%	-	X	-
9/2012	Ammonia Nitrogen	Lbs/Day	3.34	4.15	24%	X	-	-
9/2012	Ammonia Nitrogen	mg/L	1	2.34	134%	-	X	-
7/2013	Ammonia Nitrogen	Lbs/Day	3.34	3.67	10%	X	-	-
7/2013	Ammonia Nitrogen	Lbs/Day	1	1.67	67%	-	X	-
10/2012	Zinc	mg/L	0.036	0.046	28%	X	-	-
2/2013	Zinc	mg/L	0.036	0.038	6%	X	-	-
1/2014	Zinc	mg/L	0.036	0.043	19%	X	-	-
4/2014	Zinc	mg/L	0.036	0.042	17%	X	-	-
9/2012	Copper	mg/L	0.01	0.014	40%	X	-	-
4/2013	Copper	mg/L	0.01	0.012	20%	X	-	-
10/2014	Copper	mg/L	0.0057	0.018	216%	-	X	-
1/2015	Copper	mg/L	0.0057	0.008	40%	-	X	-
1/2013	Fecal Coliform	Cts/100ml	200	4200	2000%	-	-	X
2/2013	Fecal Coliform	Cts/100ml	200	1120	460%	-	-	X
3/2013	Fecal Coliform	Cts/100ml	200	2700	1250%	-	-	X
7/2013	Fecal Coliform	Cts/100ml	200	848	324%	-	-	X
8/2013	Fecal Coliform	Cts/100ml	200	1200	500%	-	-	X
2/2014	Fecal Coliform	Cts/100ml	200	228	14%	X	-	-
1/2015	Fecal Coliform	Cts/100ml	200	775	288%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY - 8/2012 through 2/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
9/2012	Fecal Coliform	Cts/100mL	400	1200	200%	-	X	-
1/2013	Fecal Coliform	Cts/100mL	400	4200	950%	-	-	X
2/2013	Fecal Coliform	Cts/100mL	400	1120	180%	-	X	-
3/2013	Fecal Coliform	Cts/100mL	400	2700	575%	-	X	-
5/2013	Fecal Coliform	Cts/100mL	400	6000	1400%	-	-	X
7/2013	Fecal Coliform	Cts/100mL	400	1200	200%	-	X	-
7/2013	Fecal Coliform	Cts/100mL	400	600	50%	X	-	-
8/2013	Fecal Coliform	Cts/100mL	400	1200	200%	-	X	-
2/2014	Fecal Coliform	Cts/100mL	400	5200	1200%	-	-	X
1/2015	Fecal Coliform	Cts/100mL	400	1200	200%	-	X	-
10/2014	Copper, Total Recoverabl	mg/L	0.014	0.018	29%	X	-	-

Outlet 001 Exceedances - Minimum 85% Removal - AVG. MONTHLY - 8/2012 through 2/2015						Degree of non-compliance		
Date	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
1/2013	BOD-5	%	85.0	67.0	21.2%	X	-	-
3/2013	BOD-5	%	85.0	80	11%	X	-	-
1/2015	BOD-5	%	85.0	83	15%	X	-	-
1/2013	TSS	%	85.0	75	4%	X	-	-
1/2015	TSS	%	85.0	83	15%	X	-	-

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		20	13	8



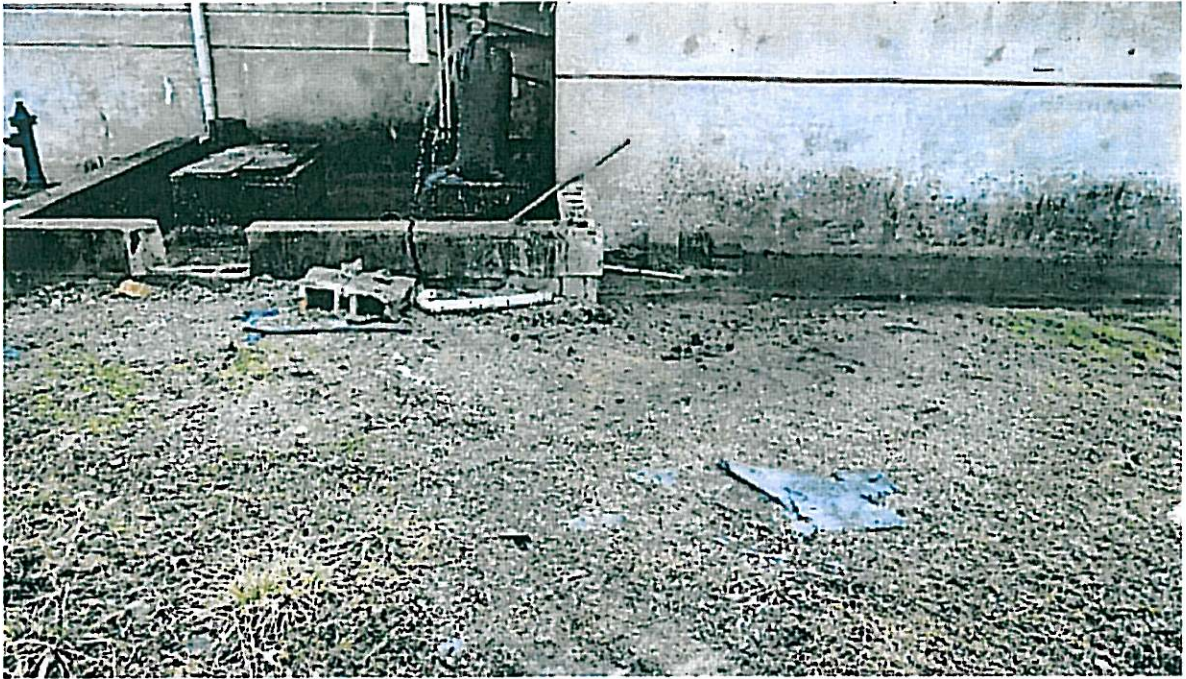


August 14, 2007-Sludge bank at SSO 002.



August 14, 2007-Sludge bank on Salem Fork of Ten Mile Creek downstream from SSO  
Outlet 002.

City of Salem  
WV0020257



March 18, 2014 Grit was observed outside the bagger system.



March 18, 2014 Grit was observed outside the bagger system.

City of Salem  
WV0020257



March 18, 2014-Grit was also observed on the sidewalk and in the grass.