

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

**KATHERYN EMERY, DIRECTOR OF
THE DIVISION OF WATER AND WASTE
MANAGEMENT, WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Plaintiff,

v.

Civil Action No. 21-C-379

SEWAGE SYSTEM, INC.,

Defendant.

CONSENT DECREE

WHEREAS, Plaintiff, Jeremy W. Bandy¹, Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection (hereinafter referred to as “WVDEP” or “Plaintiff”) filed the Complaint herein alleging that Sewage System, Inc. (hereinafter referred to as “Sewage System” or “Defendant” is in violation of the West Virginia Water Pollution Control Act (hereinafter referred to as “Act”), W. Va. Code §§22-11-1 through 22-11-30, and West Virginia National Pollutant Discharge Elimination System Permit No. WV0103110 (hereinafter referred to as “Permit”); and

WHEREAS, the WVDEP issued Registration No. WVG550729 under WV/NPDES General Permit No. WV0103110 to Sewage System authorizing it to own and operate a sewage treatment facility for the discharge of treated effluent to the Guyandotte River in Cabell County; and

¹ Jeremy W. Bandy is the current Director of the Division of Water and Waste Management, appointed to the position in January 2024.

WHEREAS, both prior to the filing of the complaint and at the time of filing of the complaint, Sewage System was alleged by WVDEP to be operating its sewage treatment facility in violation of the Act and the Permit.

WHEREAS, Sewage System is not admitting to any factual and legal allegations made by the WVDEP regarding its operation of its sewage treatment facility and is reserving all rights and defenses available regarding liability or responsibility in any proceedings regarding Sewage System other than proceedings, administrative or civil, to enforce this Consent Decree: and

WHEREAS, the parties have 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 mean of resolving this matter;

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 the Circuit Court of Cabell County pursuant to W. Va. Code § 22-11-22 because Sewage System is in and operates a sewage treatment facility in Cabell County and because the alleged violations that are the subject of this action occurred in Cabell County.

II. APPLICATION OF CONSENT DECREE

This Consent Decree applies to, and is binding upon, Sewage System, its successors and assigns.

III. INJUNCTIVE RELIEF

The Court enjoins Sewage System from operating or maintaining its sewage treatment facility in a manner that will result in further violations of the Act and the Permit, and orders Defendant to comply with all terms and conditions in the Permit.

The Court further orders Sewage System to expend the funds necessary to operate and maintain its sewage treatment facility in compliance with the Act and the Permit. In this regard, Defendant shall undertake a program to attain and thereafter maintain compliance with the Act and the 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>
Engage engineer for plant and collection system upgrades and repairs	30 days from the effective date of this Consent Decree
Prepare and implement an Operation and Maintenance Program for the facility that includes procedures for proper operation and maintenance of the facility including appropriate removal of excessive solids and including a log of all maintenance activities performed	30 days from the effective date of this Consent Decree
Properly submit timely Discharge Monitoring Reports (DMRs)	Effective the date of Consent Decree
Provide written summaries/reports of work at the WWTP regarding Sewage System Inc’s progress on the repairs and upgrades to the Plant	Quarterly reports beginning from the effective date of this Consent Decree
Complete construction of plant and collection system upgrades and repairs to WWTP	December 31, 2026

All documents required to be submitted by Sewage System to WVDEP by this Consent Decree shall be submitted to the Chief Inspector, Environmental Enforcement, West Virginia Department of Environmental Protection, 601 57th Street, SE, Charleston, West Virginia 25304.

IV. CIVIL PENALTY

In settlement of WVDEP’s claims in the Complaint relating to alleged violations of the Act and the Permit, Sewage System shall pay a civil penalty of Twelve Thousand Dollars (\$12,000.00) and to the Plaintiff, payable in twenty-four (24) monthly installments of Five Hundred Dollars and no/100 cents (\$500.00) beginning on January 1, 2025, and continuing the 1st day of each and every month thereafter until paid in full with the final payment due on December 31, 2026. Payment shall be submitted 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. Payments shall be mailed to:

Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street, SE
Charleston, West Virginia 25304

V. STIPULATED PENALTIES

Sewage System shall be liable for stipulated penalties to the WVDEP for a period of one year after entry of this Consent Decree as follows:

- * \$1,000 for any Maximum Daily effluent limitation violations;

- * \$1,000 for any Average Monthly effluent limitation violation that does not exceed 300% of the applicable limitation; and
- * \$2,000 for any Average Monthly effluent limitation violation that exceeds 300% of the applicable limitation.

Upon the effective date of this Consent Decree, and in addition to the preceding stipulated penalties for effluent violations, Sewage System agrees to stipulated penalties, in the amount of five hundred dollars (\$500) per day, for each instance of failure to achieve project milestones associated with repairs and/or upgrades to the collection system and/or wastewater treatment plant in accordance with the schedule of tasks described in Section Three (3) of this Consent Decree. Stipulated penalties for failing to adhere to these Section Three (3) project milestones shall expire one (1) year after the scheduled completion date for upgrades and/or repairs.

Payment of stipulated penalties shall be made within thirty (30) days of receipt of written demand by WVDEP, unless Sewage System moves the Court within the 30-day period of receipt of the written demand for a hearing thereon and thereafter demonstrates to the satisfaction of the Court that a failure to meet any deadline or requirement in this Consent Decree was due to circumstances beyond the control of Sewage System.

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 Sewage System's failure to comply with the requirements of this 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, 601 57th Street, SE, Charleston, WV 25304.

Should Sewage System fail to comply with its effluent limitations and/or complete the tasks in accordance with the schedule in Section III of this Consent Decree for reasons other than those constituting a force majeure event, Sewage System shall notify the WVDEP Chief Inspector in writing within three (3) working days of becoming aware of each effluent limit exceedance or task delay.

Written notification of a delay in the completion of a task shall specify the reasons for the delay, the anticipated length of the delay, and the measures Sewage System intends to take to minimize the delay and resume compliance with the schedule. Written notification of an exceedance of an effluent limit shall specify the reason for the exceedance and the measures Sewage System intends to take to avoid the recurrence of the exceedances and resume compliance with the WV/NPDES permit. Upon consideration of the notification, WVDEP shall issue a written response to Sewage System, in which the Chief Inspector may forego the issuance of a stipulated penalty and/or extend a task deadline.

VI. QUARTERLY REPORTS

From the date of entry of this Consent Decree, Sewage System 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 Sewage System 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.

VII. FUNDING

Performance of the terms of this Consent Decree by Sewage System 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.

VIII. FORCE MAJEURE

Force Majeure is an event that is outside the control of the Defendant, such as an act of God, and makes it impossible to comply with the terms of this Consent Decree.

If any event occurs which causes delay in the achievement of the requirements of this Consent Decree, Sewage System 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. Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Sewage System becomes aware of such delay, notification shall be provided to the Director/Chief Inspector and Sewage System 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 Sewage System intended to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Sewage System (i.e., force majeure), the time for performance shall be extended for a period not exceeding the delay resulting from the circumstances. In the event the WVDEP does not agree, Sewage System may submit the matter to this Court for resolution.

IX. RETENTION OF JURISDICTION

The Court shall retain jurisdiction over this matter to interpret and enforce the terms of this Consent Decree.

X. MODIFICATIONS

This Consent Decree contains the entire agreement between the parties. It may not be enlarged, modified, or altered, unless 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 Sewage System of any other obligation imposed by the Act, the Permit, or any permit issued under the Act, except as expressly provided herein, nor shall it in any way relieve Sewage System 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 W. Va. Code R. § 47-10-16.2.c. The public shall have at least thirty (30) days 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. Sewage System consents to entry of this Consent Decree without further notice. If for any reason, this Court should decline to approve

this Consent 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) Sewage System has achieved complete compliance with all requirements of this Consent Decree; (2) Sewage System 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 Sewage Systems' successors and assigns and shall remain in effect until Sewage System or its successors or assigns demonstrate, as required by Section XIV herein, they have complied with all 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 _____, 2024.

Gregory L. Howard, Judge

We hereby consent to the entry of this Decree.

Jeremy W. Bandy, Director
Division of Water and Waste Management
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, West Virginia 25304

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