

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

JAMES J. HOFFMAN

COMPLAINT NO. CIC 2010-02

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and James J. Hoffman freely and voluntarily enter into the following Conciliation Agreement pursuant to West Virginia Code § 6B-2-4(s) to resolve all potential charges arising from the above referenced Complaint.

FINDINGS OF FACT

The following facts are hereby stipulated and agreed upon by the West Virginia Ethics Commission and James J. Hoffman (“Respondent”), and are to be taken as true and correct:

1. At all times relevant, the City of Keyser owned and, through its employees, operated the Keyser Wastewater Treatment Plant and the City of Keyser Laboratory for the testing of water, as well as all the office and Lab furnishings, equipment, chemicals and supplies contained therein and assigned thereto.
2. All times relevant, Respondent was a salaried employee of the City of Keyser in its Sanitation Department, as Plant Supervisor for the Keyser Wastewater Treatment Plant and Director of the City of Keyser Laboratory (the “Lab”).
3. Respondent’s public employment duties required his operation and maintenance of the Keyser Wastewater Treatment Plant and the taking of samples from wastewater treatment plants which were owned, operated and maintained by customers of the City of Keyser, and to test the same.


J.J.H.

4. Respondent was, at all times relevant, the direct supervisor of Jeremy Miner, a non-salaried employee of the City of Keyser Sanitation Department and assigned to the Keyser Wastewater Treatment Plant.

5. Respondent and Jeremy Miner in or about 1998, formed a partnership called J&J Environmental and later, on March 11, 2009, organized a limited liability company known as J&J Environmental, LLC, by registering the same with the Office of the Secretary of State of West Virginia. (Both entities will be referred to collectively hereinafter as "J&J Environmental.") Since 1998, J&J Environmental, has maintained and provided on-site technical assistance for independently operated wastewater treatment plants, water plants and pump stations for public and private property owners. J&J Environmental, at all times relevant, had no employees other than Respondent and Miner.

6. During all times relevant, all J&J Environmental customer accounts were maintained on City of Keyser computers and J&J Environmental used the office equipment at the Keyser Wastewater Treatment Plant, including the fax machine and copier, for invoicing J&J Environmental customers.

7. During all times relevant, Respondent used equipment and chemicals purchased by the City of Keyser for the testing of water samples for customers of J&J Environmental.

8. During all times relevant, the City of Keyser did not receive reimbursement from J&J Environmental, for use of its office space, equipment, chemicals or supplies.

9. During all times relevant, J&J Environmental, through the actions of Respondent and his subordinate employee at the Keyser Wastewater Treatment Plant, Jeremy Miner, performed services for its customers at times when the said City of Keyser employees were "on the clock" for the City of Keyser. The following are examples of such conduct:

(a) J&J Environmental invoiced Dominion for performing consulting services on a trip to Blackwater Falls WWTP for six (6) hours on August 26, 2008. (Invoice # 477) The payroll records of the City of Keyser reflect that on August 26, 2008, Respondent did not take vacation time, and Miner was paid for seven (7) hours work and one (1) hour of vacation.

(b) J&J Environmental invoiced Dominion for certifying one (1) 6" backflow device at the Bayard Power Plant for Dominion Power, including travel, on September 23, 2008. (Invoice # 478) The payroll records of the City of Keyser reflect that on September 23, 2008, Respondent did not take vacation time, and Miner was paid for a full day's work plus one-half ($\frac{1}{2}$) hour of overtime.

(c) On that same day, September 23, 2008, J&J Environmental also certified two (2) backflow devices at the Mt. Storm Power Plant for Dominion Power, including travel, according to a second invoice to Dominion. (Invoice # 479) The payroll records reflect that on September 23, 2008, Respondent did not take vacation time, and Miner was paid for a full day's work plus one-half

(½) hour of overtime.

(d) J&J Environmental invoiced Woda for replacing a check valve and for new discharge lines at the Wardenacres Lift Station (5) for the Town of Wardensville on November 20, 2008. (Invoice # 503) The payroll records of the City of Keyser reflect that on November 20, 2008, Respondent did not take vacation time, and Miner was paid by the City of Keyser for a full day's work.

(e) At approximately 1:00 p.m. on December 8, 2008, Respondent was at the Peterkin 4-H Camp Conference in Romney, West Virginia, a customer of J&J Environmental. The payroll records of the City of Keyser reflect that Respondent worked a full day for the City of Keyser on December 8, 2008.

(f) J&J Environmental invoiced Automated Packaging for inspecting and certifying one (1) backflow device for Automated Packaging in Keyser on December 10, 2008. (Invoice # 517) The payroll records of the City of Keyser reflect that on December 10, 2008, Respondent did not take vacation time, and Miner was paid by the City of Keyser for a full day's work, specifically, five (5) hours in the sewer plant and three (3) hours in the Lab.

(g) On December 18, 2008, Jeremy Miner left the plant at 1:00 and returned at 3:00, worked on some samples and clocked out at 4:00 p.m. All this time was spent on J&J Environmental work. Miner's payroll records

show that he worked a full day for the City of Keyser on December 18, 2008; specifically, six (6) hours at the sewer plant and two (2) hours in the Lab.

(h) J&J Environmental invoiced Woda for removing four (4) pumps for cleaning and degreasing at the Muirwood Green (complex) in Romney on January 20, 2009. (Invoice # 532) The payroll records of the City of Keyser reflect that on January 20, 2009, Respondent did not take vacation time, and Miner was paid by the City of Keyser for a full day's work, although he took one-half (4 hours) of the day as sick leave.

(i) On February 25, 2009, J&J Environmental, invoiced Hardy County RDA for removing 15' of cast iron return line and repairing two holes in a pipe and replacing it back into operation on February 25, 2009. (Invoice # 549) The payroll records of the City of Keyser reflect that on February 25, 2009, Respondent did not take vacation time, and Miner was paid by the City of Keyser for a full day's work, specifically, two (2) hours at the sewer plant and six (6) hours in the Lab.

10. J&J Environmental, under the ownership of Respondent and Jeremy Miner, and for their own personal gain, diverted customers of their employer, the City of Keyser, away from their employer, and provided services to such customers through J&J Environmental, without monetary reimbursements to the City of Keyser. The following are examples of such conduct:

(a) Faulk Brothers Scrap Yard was a customer of the City of Keyser. For services rendered to Faulk Brothers Scrap Yard, William Faulk paid Respondent about \$200 per year for 3 or 4 years, and an extra \$200 for an emergency paperwork job, all in cash as requested by Respondent. On May 28, 2008, Respondent wrote to the West Virginia Department of Environmental Protection Division of Water and Waste Management, on J&J Environmental, LLC, letterhead, stating that Faulk Brothers had hired J&J Environmental and enclosing reports of groundwater samples tested that same day, May 28, 2008, at the Keyser Lab. The City of Keyser never received money for any services performed for the Faulk Brothers Scrap Yard at the Lab of the City of Keyser Wastewater Treatment Plant.

(b) N & S Restaurant in Mathias, Hardy County, West Virginia, paid J&J Environmental \$260 per month, sometimes in cash. None of the cash payments were turned over to the City of Keyser, even though the water samples from the N&S Restaurant wastewater plant were tested in the Lab according to the following Discharge Monitoring Reports:

(1) The Discharge Monitoring Report for N & S Restaurant, Mathias, Hardy County, WV, for the first quarter of 2008, shows that testing was performed in the City of Keyser Lab on April 10, 2008. No payment was received by the City of Keyser.

(2) The Discharge Monitoring Report for N & S Restaurant, Mathias, Hardy County, WV, for the second quarter of 2008, shows that testing was performed in the City of Keyser Lab on June 20, 2008. No payment was received by the City of Keyser.

(3) The Discharge Monitoring Report for N & S Restaurant, Mathias, Hardy County, WV, for the third quarter of 2008, shows that testing was performed in the City of Keyser Lab on October 10, 2008. No payment was received by the City of Keyser.

(4) The Discharge Monitoring Report for N & S Restaurant, Mathias, Hardy County, WV, for the fourth quarter of 2008, shows that testing was performed in the City of Keyser Lab on December 27, 2008. No payment was received by the City of Keyser.

The usual and customary charge in 2008 to customers of the City of Keyser Lab for the preparation of a NPDES Discharge Monitoring Report was \$20.00. (The charges for testing varied with the tests which was performed.)

11. Respondent directed the purchase of the following equipment by the City of Keyser which was used for the work of J & J Environmental:

(a) Keyser Sanitation Department purchased a Watts TK99E Backflow Preventer Test Kit, for \$1,218.87 (City of Keyser Invoice #055328, Purchase Order #19007, dated October 12, 2005), which was not needed for

maintenance of the City of Keyser Wastewater Treatment Plant. It has been used by Respondent for the following J&J Environmental customers: (i) Mineral County Schools and (ii) Dominion Power.

(b) Keyser Sanitation Department purchased a Dissolved Oxygen Meter, model YSI-55, which, as it is portable testing equipment, is not used at the City of Keyser Wastewater Treatment Plant.

(c) Keyser Sanitation Department owns a HACH, portable pH meter model #s 51935-00, 51935-11 and 51935-22, which, as it is a portable pH meter, is not used at the City of Keyser Wastewater Treatment Plant.

12. Respondent made the following misrepresentations of material fact to the staff of the West Virginia Ethics Commission on March 10, 2009:

(a) Respondent denied performing J&J Environmental maintenance work while "on the clock" for the City of Keyser.

(b) Respondent denied using City of Keyser equipment in furtherance of the activities of J&J Environmental, falsely stating that while performing work for J&J Environmental, he did not utilize any equipment and that he used only his hands.

On March 4, 2010, the Ethics Commission voted to initiate a Complaint against Respondent relating to the Respondent's knowing and intentional use of his office for private gain by using publicly owned equipment, time and property for his own private

financial gain and/or the private financial gain of others in violation of the West Virginia Ethics in Government Act, W.Va. Code § 6B-2-5(b), and for keeping money received for testing conducted at the Keyser Lab when this money belonged to the City of Keyser, and, not to him or J&J Environmental. The Complaint further charged that he violated the Ethics Act by providing false or misleading material information to the Commission in violation of West Virginia Code § 6B-2-10(f).

RELEVANT LEGAL PROVISIONS

West Virginia Code § 6B-2-5(b) provides, in relevant part, that a public official or public employee may not knowingly and intentionally use his office or the prestige of his office for his own private gain or that of another person.

West Virginia Legislative Rule § 158-6-5 generally prohibits the use of government property for personal projects or activities that result in private gain.

West Virginia Code § 6B-2-10(f) provides, in relevant part, that a person who knowingly gives false or misleading material information to the Commission is subject to administrative sanction by the Commission.

CONCILIATION OF VIOLATION

I, **JAMES J. HOFFMAN**, a former City of Keyser employee, freely and voluntarily enter into this Conciliation Agreement. I admit and acknowledge that I violated the West Virginia Governmental Ethics Act (W.Va. Code § 6B-1-1 *et seq.*) by using ^{my JH} any public employment office as Plant Supervisor of the City of Keyser Wastewater Treatment Plant and City of Keyser Lab for my own personal gain

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- (a) by conducting my personal business activities on behalf of J&J Environmental with the use of City of Keyser office space, equipment, chemicals and supplies;
- (b) by providing my services and by directing a subordinate City of Keyser employee to provide services to J&J Environmental customers while “on the clock” for the City of Keyser;
- (c) by causing the City of Keyser to acquire equipment intended for use by, and used by, J&J Environmental; and
- (d) by, in certain instances, not paying Lab fees over to the City of Keyser which were received from customers of J&J Environmental and the City of Keyser for services rendered on their behalf by the City of Keyser Lab.

I further admit and acknowledge that I violated the Ethics Act by giving false and misleading statements to the West Virginia Ethics Commission on March 10, 2009, when I denied that I performed work for J&J Environmental while “on the clock” for the City of Keyser, and when I denied that I used any equipment or supplies owned by the City of Keyser in the furtherance of my work on behalf of my said private business.

In order to resolve this matter, I hereby enter this agreement. I believe it is in my best interest and the interest of the public to resolve this matter without further proceedings. By signing this agreement, I also agree to the imposition of sanctions by the West Virginia Ethics Commission.

I acknowledge and hereby agree that no promise or agreement other than that herein expressed has been made to me. I further acknowledge that in executing this Agreement, I have carefully considered the terms and sanctions; have been afforded the opportunity to consult with counsel; am entering this Agreement of my own free will and accord; and am not suffering from any physical, mental or other condition which prevents the exercise of my judgment with respect to the terms of the Agreement.

I additionally acknowledge that I do not have to enter into this Conciliation Agreement. I understand that in lieu of this Agreement, I may challenge, refute and provide a defense on my own behalf to the allegations raised in the Complaint. I understand that if I do not enter into this Agreement, this matter will be referred back to the Probable Cause Review Board and I will have the opportunity to respond to the Complaint in writing and/or in person. I also understand that if, after investigation, the Review Board finds probable cause to believe that I violated the Ethics Act, I will be entitled to a public hearing, and I will be permitted to call witnesses on my own behalf, and to cross examine the witnesses and evidence presented against me.

I also fully understand that if I do not enter into this Agreement, the Ethics Commission must prove beyond a reasonable doubt that I have violated the West Virginia Ethics Act before imposing any sanctions against me. Notwithstanding these foregoing rights, it is still my desire to proceed with this Agreement and resolve this matter without further adjudication of the merits of the alleged violations.

I understand that for this Conciliation Agreement to be finalized, the Ethics Commission must approve the Agreement and must further make determination concerning the sanctions to impose.

In consideration for the settlement and resolution of this matter, I agree to the imposition of the following sanctions by the Ethics Commission:

- a. Public reprimand
- b. Reimbursement to the City of Keyser of a total of Two Thousand Six Hundred Twenty-eight (\$2,628.00) dollars for monies received by Respondent for services inappropriately provided as described in sections 9 and 10 above:

Invoice # 477	\$	168.00
Invoice # 478		150.00
Invoice # 479		250.00
Invoice # 503		470.00
Invoice # 517		100.00
Invoice # 532		480.00
Invoice # 549		130.00
Faulk Bros. (3yrs. +\$200)		800.00
NS Restaurant (4 DMRs)		80.00
	\$	2,628.00

- c. Payment to the West Virginia Ethics Commission of Five Hundred (\$500.00) dollars as reimbursement towards the costs of the investigation; and
- d. Payment of a fine of Seven Thousand Five Hundred (\$7,500.00) dollars.

I further agree to pay the reimbursement and fine in the following structured payments, with the understanding that the reimbursement to the City of Keyser shall be completed prior to the payment of the fine:

- a. Pay to the City of Keyser the aggregate of Two Thousand Six Hundred Twenty-eight (\$2,628.00) dollars on or before ~~January 31~~^{FEBRUARY 29}, 2012. A check in said amount shall be made payable to "City of Keyser" and mailed to the West Virginia Ethics Commission at the address set forth below. JH 562
- b. Pay to the Ethics Commission for deposit into the State of West Virginia General Fund the aggregate of Eight Thousand (\$8,000.00) dollars in 22 equal monthly payments commencing March 1, 2012, of Three Hundred Fifty (\$350.00) dollars each and a final payment on or before January 2, 2014, in the amount of Three Hundred (\$300.00) dollars.

All monthly payments as set forth above shall be due and payable on or before the 1st day of each successive month until the entire amount is paid in full, and shall be mailed to West Virginia Ethics Commission, 210 Brooks Street, Suite 300, Charleston, WV 25301-1804.

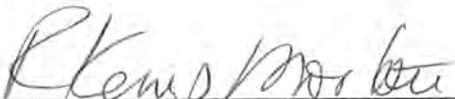
By signing this Agreement, I hereby acknowledge and agree that the Ethics Commission will impose only the sanctions listed above. In the event that the Ethics Commission issues an Order imposing any sanction exceeding or in addition to those specifically set forth herein, then this Conciliation Agreement shall be null and void.

It is further hereby agreed that if the Ethics Commission fails to approve this Conciliation Agreement, this Agreement shall be null and void and will be referred back to the Probable Cause Review Board where the Complaint will continue to be considered and reviewed in accordance with the West Virginia Code and the Ethics Commission's legislative rules.

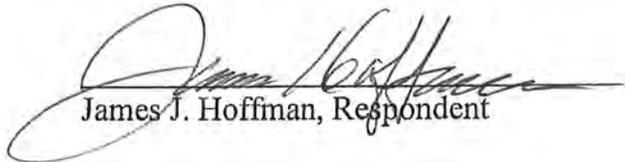
If the Ethics Commission approves this Agreement, I understand that it will enter an Order in which it approves the Agreement and sets forth the sanctions listed above. I further understand that pursuant to W. Va. Code § 6B-2-4(s), this Conciliation Agreement and the Ethics Commission's Order must be made available to the public.

WHEREFORE, the foregoing constitutes the full and complete Agreement between the Parties hereto, and each Party has voluntarily and freely affixed their signature below with the intent to be bound thereby.

Date: 02/02/12


R Kemp Martin, Chairperson
WV Ethics Commission

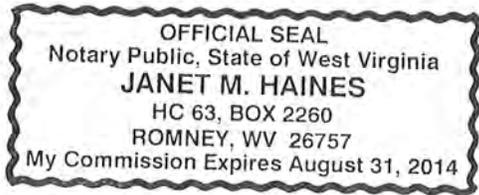
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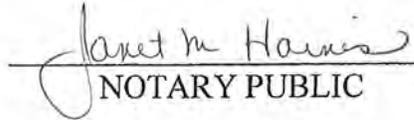

James J. Hoffman, Respondent

STATE OF WEST VIRGINIA,
COUNTY OF Hampshire

The foregoing instrument was acknowledged before me this 9th day of January, 2012, by James J. Hoffman.

My commission expires August 31, 2014




NOTARY PUBLIC

Prepared on behalf of the West Virginia Ethics Commission by its investigator:
Stephen G. Jory, McNeer, Highland, McMunn and Varner, L.C., P.O. Box 1909, Elkins, WV 26241

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

**Respondent James Hoffman, CIC 2010-02
Former Supervisor, City of Keyser Wastewater Treatment Plant**

COMMISSION'S ORDER

After considering the foregoing FINDINGS OF FACT, RELEVANT LEGAL PROVISIONS and CONCILIATION OF VIOLATION, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and the Respondent, as required by West Virginia Code § 6B-2-4(s). In accordance with West Virginia Code § 6B-2-4(r) and the terms of the Conciliation Agreement, the Commission imposes the following sanctions:

- (1) The West Virginia Ethics Commission hereby Orders that Respondent James Hoffman should be, and hereby is, **publicly reprimanded**;
- (2) The West Virginia Ethics Commission hereby **Orders** Respondent Hoffman to pay **\$2,628.00** to the City of Keyser as restitution to the City for using public time and resources in furtherance of his private business activities, including the use of its testing facility. A check in said amount shall be made payable to the City of Keyser and mailed to the West Virginia Ethics Commission, post marked no later than February 28, 2012;
- (3) The West Virginia Ethics Commission hereby **Orders** Respondent Hoffman to pay **\$500.00**, payable to the West Virginia Ethics Commission, for reimbursement towards its cost of investigating this matter;
- (4) The West Virginia Ethics Commission hereby **Orders** Respondent Hoffman to pay a **\$7,500.00** fine, payable to the West Virginia Ethics Commission; and
- (5) It is hereby ordered that the amounts of \$500.00 and \$7,500.00 shall be paid to the Ethics Commission in accordance with the agreed-to payment plan set forth in the Conciliation Agreement.

Date: February 2, 2012


R. Kemp Morton, III, Chairperson
West Virginia Ethics Commission