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ENVIRONMENTAL
ENFORCEMENT

west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

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

TO: Bungalow Woods Homeowners Association DATE: February 10, 2011
Box 600
Holden, WV 25625 ORDER NO.: 7175
Attn: Mike Stone

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 Bungalow Woods Homeowners Association (hereinafter "Bungalow Woods HOA").

FINDINGS OF FACT

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

1. Bungalow Woods HOA operates a sewage treatment plant located near Holden, Logan County, West Virginia. Bungalow Woods HOA was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG551266 on January 22, 2002.
2. On September 16, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the aforementioned facility and determined that Bungalow Woods HOA's WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG551266 was voided due to nonpayment of annual fees on August 6, 2009. Bungalow Woods HOA was operating and discharging waste water into waters of the State in violation of WV Code Chapter 22 Article 11, Section 1 et seq. (22-11-1). Notice of Violation (NOV) No. W10-23-048-MCD was issued.

3. On September 16, 2010, WVDEP personnel observed and documented effluent from Bungalow Woods HOA caused conditions not allowable in waters of the State, distinctly visible suspended solids, in violation of WV Legislative Rule (Requirements Governing Water Quality Standards): Title 47, Series 2, Section 3.2. (47CSR2-3.2.) NOV No. W10-23-047-MCD was issued.
4. On September 16, 2010, file review was conducted and WVDEP determined Bungalow Woods HOA had failed to submit discharge monitoring reports (DMRs) for 3rd and 4th quarters of 2008, and 1st, 2nd, and 3rd quarters of 2009. NOV No. W10-23-049-MCD was issued.
5. On November 3, 2010, WVDEP personnel conducted an inspection and observed and documented Bungalow Woods HOA continued to discharge untreated waste water into waters of the State without a valid WV/NPDES permit, in violation of 22-11-1 et seq. NOV No. W10-23-009-MBC was issued.
6. On January 27, 2011, a meeting was held between WVDEP and Bungalow Woods HOA to discuss the terms of this Order. Subsequent to the meeting, Bungalow Woods HOA provided financial documentation that showed a reduced ability to pay a civil administrative penalty.

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. Bungalow Woods HOA shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within ten (10) days of entry of this Order, Bungalow Woods HOA shall submit a complete permit application to obtain a WV/NPDES permit.
3. Within thirty (30) days of entry of this Order, Bungalow Woods HOA shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Bungalow Woods HOA will achieve compliance with all pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

A copy of this plan shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th 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.

4. Because of Bungalow Woods HOA's West Virginia Code and Legislative Rule violations, Bungalow Woods HOA shall be assessed a civil administrative penalty of two thousand nine hundred dollars (\$2,900) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

Payment 1 in the amount of \$1,450 due on or before May 1, 2011.

Payment 2 in the amount of \$1,450 due on or before August 1, 2011.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

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

OTHER PROVISIONS

1. Bungalow Woods HOA 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, Bungalow Woods HOA 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, Bungalow Woods HOA 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 Bungalow Woods HOA 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, Bungalow Woods HOA 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 Bungalow Woods HOA becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and 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 Bungalow Woods HOA 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 Bungalow Woods HOA (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 Bungalow Woods HOA 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 Bungalow Woods HOA 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 Bungalow Woods HOA, its successors and assigns.
7. This Order shall terminate upon Bungalow Woods HOA's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Mike Stone
Bungalow Woods HOA

2-20-11

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Bungalow Woods HOA

Receiving Stream:

Copperas Mine Fork

Treatment System Design Maximum Flow: 0.011 MGD

Treatment System Actual Average Flow: _____ MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#												
			2	3	4	5									
a)	Amount of Pollutant Released	1 to 3	1	2	1	1									
b)	Toxicity of Pollutant	0 to 3	0	1	0	0									
c)	Sensitivity of the Environment	0 to 3	0	1	0	0									
d)	Length of Time	1 to 3	2	1	1	3									
e)	Actual Exposure and Effects thereon	0 to 3	0	1	0	0									
Average Potential for Harm Factor			0.6	1.2	0.4	0.8	No								
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	3	3									

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly, >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	20		\$3,280
6.2.b.4 - Compliance/noncompliance history	10		\$1,640
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,550		\$1,550
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)		\$20,000	(\$20,000)
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$13,500)
Penalty =			\$2,900

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$1,250
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	\$300
Competitive Advantage	
Estimated Economic Benefit	\$1,550
Comments:	