



west virginia department of environmental protection

Division of Water and Waste Management
601 57th 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

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

TO: Chestnut Ridge Homeowners Association
Mr. Shannon Bland
1550 Kanawha Blvd. East
Charleston, WV 25311

DATE: January 3, 2013

ORDER NO.: 7040

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 Chestnut Ridge Homeowners Association (hereinafter "Chestnut Ridge").

FINDINGS OF FACT

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

1. Chestnut Ridge operates a package sewer treatment plant located in Kanawha County, West Virginia. Chestnut Ridge was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550807, on October 26, 2005 and June 14, 2011.
2. On July 10, 2009, WVDEP personnel conducted an inspection of the Chestnut Ridge sewage treatment plant. During the inspection, the following violations of WV Legislative Rule and the terms and conditions of Chestnut Ridge's WV/NPDES permit were observed and documented:
 - a. Section F.1 - Chestnut Ridge failed to properly operate and maintain the facility.
 - b. 47CSR2 Sections 3.2.a and b - Chestnut Ridge caused conditions not allowable by creating distinctly visible suspended solids and deposits in waters of the State.

- c. Section A.3 - WVDEP personnel collected effluent samples (SW-TCF-07-10-09-1045-1) and determined that the facility exceeded Category III summer Instantaneous Maximum discharge limitations for BOD5, Total Suspended Solids (TSS), Ammonia Nitrogen, and Fecal Coliform (Attachment A). These permit excursions can be summarized as follows:
 - i. Two (2) moderate exceedances
 - ii. Two (2) major exceedances
- d. Section B.2 - Chestnut Ridge failed to submit a Discharge Monitoring Report (DMR) for the 2nd quarter of 2008.
- e. Section A.3 - Upon review, WVDEP personnel determined that Chestnut Ridge's 4th quarter 2008 DMR reported exceedances of instantaneous maximum, maximum daily, and average monthly Ammonia Nitrogen (Attachment A). These permit excursions can be summarized as follows:
 - i. Two (2) minor exceedances
 - ii. One (1) moderate exceedance

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. F09-20-101-TCF, F09-20-102-TCF, and F-09-20-103-TCF were issued to Chestnut Ridge.

3. On January 22, 2010, WVDEP personnel inspected a pump station serving the Chestnut Ridge sewage treatment plant. During the inspection, the following violations of WV Legislative Rule and the terms and conditions of Chestnut Ridge's WV/NPDES permit were observed:
 - a. Section F.1 – Chestnut Ridge failed to operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of its permit. WVDEP personnel determined that only one pump was installed in the duplex pump station, and the pump was not operational.
 - b. 47CSR11 Section 2.2.a – WVDEP personnel observed the pump station bypassing, and Chestnut Ridge failed to give immediate notice of this unpermitted discharge of pollutants into waters of the State.

As a result of the aforementioned violations, NOV Nos. W10-20-001-KWS and W10-20-002-KWS were issued to Chestnut Ridge.

4. On March 8, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Chestnut Ridge's WV/NPDES permit were observed and documented:
 - a. Section F.1 - Chestnut Ridge failed to properly operate and maintain the facility. Specifically, Chestnut Ridge failed to maintain sand filter beds, remove solids from the chlorine contact chamber, and stock de-chlorination tablets in the chemical feeders.
 - b. Section C - Chestnut Ridge failed to report a bypass of treatment.

As a result of the aforementioned violations, NOV Nos. W12-20-045-BMW and W12-20-046-BMW were issued to Chestnut Ridge.

5. On November 1, 2012, WVDEP personnel met with Mr. Shannon Bland, a representative of Chestnut Ridge, to discuss the terms and conditions of this Order.
6. On November 1, 2012, WVDEP personnel met with Mr. Shannon Bland at the Chestnut Ridge facility to assess compliance. During this site visit, a violation of the following terms and conditions of Chestnut Ridge's WV/NPDES permit was observed and documented:
 - a. Section F.1 - Chestnut Ridge failed to properly operate and maintain the facility. Specifically, Chestnut Ridge failed to maintain sand filter beds and remove solids from the chlorine contact chamber.
7. On November 30, 2012, WVDEP personnel conducted a review of facility records from the time period of November 2010 through November 2012. During this review, the following violations of the terms and conditions of Chestnut Ridge's WV/NPDES permit were observed:
 - a. Section B.2 - Chestnut Ridge failed to submit DMRs for Second Quarter 2011, Third Quarter 2011, Fourth Quarter 2011, Second Quarter 2012, and Third Quarter 2012.
8. WVDEP personnel performed a review of property records and confirmed that the Chestnut Ridge sewer treatment facility is located on property owned by Chestnut Ridge Land Company. Mr. Shannon Bland is the president of Chestnut Ridge Land Company.

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. Chestnut Ridge shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, Chestnut Ridge shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Chestnut Ridge will achieve compliance with all terms and conditions of its WV/NPDES permit and 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.

3. Because of Chestnut Ridge's Legislative Rule and permit violations, Chestnut Ridge shall be assessed a civil administrative penalty of eleven thousand ten dollars (\$11,010) 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 be mailed to:**

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

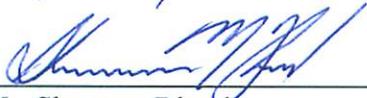
OTHER PROVISIONS

1. Chestnut Ridge 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, Chestnut Ridge 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, Chestnut Ridge 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 Chestnut Ridge 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, Chestnut Ridge 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 Chestnut Ridge 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 Chestnut Ridge 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 Chestnut Ridge (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 Chestnut Ridge 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 Chestnut Ridge 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 Chestnut Ridge, its successors and assigns.
7. This Order shall terminate upon Chestnut Ridge's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

CRHOA by



Mr. Shannon Bland
Chestnut Ridge Homeowners Association

2-15-13

Date

Public Notice begin:



Date

APR - 4 2013

Public Notice end:



Date

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

Date

Attachment A:
Chestnut Ridge DMR Exceedances

| Outlet 001 DMR Exceedances - AVG. MONTHLY | | | | | | Degree of non-compliance | | |
|---|------------------|-------|------------------------|-----------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted avg. monthly | Reported avg. monthly | % Exceedance | Min | Mod | Maj |
| 12/08 | Ammonia Nitrogen | mg/L | 6.0 | 22 | 267% | - | X | - |

| Outlet 001 DMR Exceedances - MAX. DAILY | | | | | | Degree of non-compliance | | |
|---|------------------|-------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted max. daily | Reported max. daily | % Exceedance | Min | Mod | Maj |
| 12/08 | Ammonia Nitrogen | mg/L | 12.00 | 22 | 83% | X | - | - |

| Outlet 001 DMR Exceedances - INSTANTANEOUS. MAX. | | | | | | Degree of non-compliance | | |
|--|------------------|------------|----------------------|---------------------|--------------|--------------------------|-----|-----|
| Date | Parameter | Units | Permitted max. daily | Reported max. daily | % Exceedance | Min | Mod | Maj |
| 12/08 | Ammonia Nitrogen | mg/L | 15.00 | 22 | 47% | X | - | - |
| 07/09 | BOD | mg/L | 12.50 | 160 | 1180% | - | - | X |
| 07/09 | TSS | mg/L | 75.00 | 162 | 116% | - | X | - |
| 07/09 | Ammonia Nitrogen | mg/L | 7.50 | 15.6 | 108% | - | X | - |
| 07/09 | Fecal Coliform | col/100 ml | 500.00 | 60,000 | 11900% | - | - | X |

| | | | | | | Degree of non-compliance | | |
|-------------------|--|--|--|--|--|--------------------------|-----|-----|
| | | | | | | Min | Mod | Maj |
| Outlet 001 Totals | | | | | | 2 | 3 | 2 |

Photos



Outlet with overflow visible



De-chlorination tablet feeders

Photos



Ponding on sand filters



Chlorine contact

Photos



Filamentous growth in contact chamber



Filamentous growth in contact chamber

Photos



Overflow from sand filter



Overflow from sand filter

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Chestnut Ridge Homeowners Association **Receiving Stream:** Little Smith Creek

Treatment System Design Maximum Flow: 0.009 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# | | | | | | | | | | | | | |
|--|-------------------------------------|---------------------|------|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|
| | | | 4a | 4b | 6a | 7a | | | | | | | | | | |
| a) | Amount of Pollutant Released | 1 to 3 | 1 | 1 | 1 | 1 | | | | | | | | | | |
| b) | Toxicity of Pollutant | 0 to 3 | 1 | 0 | 1 | 0 | | | | | | | | | | |
| c) | Sensitivity of the Environment | 0 to 3 | 1 | 0 | 1 | 0 | | | | | | | | | | |
| d) | Length of Time | 1 to 3 | 2 | 1 | 3 | 3 | | | | | | | | | | |
| e) | Actual Exposure and Effects thereon | 0 to 3 | 1 | 0 | 1 | 0 | | | | | | | | | | |
| Average Potential for Harm Factor | | | 1.2 | 0.4 | 1.4 | 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 - | | | \$0 |
| 6.2.b.4 - Compliance/noncompliance history | | | \$0 |
| 6.2.b.6 - Economic benefits - (flat monetary increase) | | | \$0 |
| 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) | | | \$0 |
| 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 | | 10 | (\$1,220) |
| 6.2.b.5 - Ability to Pay | | | \$0 |
| Penalty Adjustments | | | (\$1,190) |
| Penalty = | | | \$11,010 |

| Estimated Economic Benefit Item | Estimated Benefit (\$) |
|--|------------------------|
| Monitoring & Reporting | |
| Installation & Maintenance of Pollution Control Equipment | |
| O&M expenses and cost of equipment/materials needed for compliance | |
| Permit Application or Modification | |
| Competitive Advantage | |
| Estimated Economic Benefit | \$0 |
| Comments: | |