



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

TO: Shannon McDonald, President
Corners at Arden HMO
47 Ansley Park
Inwood, WV 25428

DATE: February 2, 2010

ORDER NO.: 7118

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 Corners at Arden HMO.

FINDINGS OF FACT

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

1. Corners at Arden HMO operated the Corners at Arden recirculating sand filter wastewater treatment plant (WWTP) located in Inwood, Berkeley County, West Virginia. On August 8, 2008, WV/NPDES Permit No. WV0103110, General Permit Registration No. WVG550966 was transferred from William Paxton to Corners at Arden HMO. On September 2, 2010, this permit was transferred from Corners at Arden HMO to Berkeley County PSSD. This permit was scheduled to expire on May 13, 2010, but was administratively extended by the agency until January 13, 2011.
2. On August 26, 2008, West Virginia Department of Environmental Protection (WVDEP) personnel conducted a partial inspection of the treatment system.
 - a. This was a partial inspection due to the failure of Corners at Arden HMO representative(s) to be present at the meeting scheduled for that day.
 - b. During this inspection several significant deficiencies were documented, including: both sand filter cells were clogged and ponded with evidence of overflows observed at the back corner of cell two; a very septic odor was present around the area; the

Promoting a healthy environment.

dosing system appeared to be non-functional; growth inside the fence had not been maintained. These all illustrate a failure to properly operate and maintain the facility and are violations of its WV/NPDES permit (Section F.1). NOV No. 08-02-62-224 was issued.

3. On September 19, 2008, a meeting between WVDEP personnel and Clifton Browning, Manager of Operations for the Berkeley County Public Sewer Service District (BCPSSD), took place at the Corners at Arden WWTP, at which time plans to take over the facility and bring it into compliance were discussed.
4. On May 13, 2009, a meeting between WVDEP personnel and Corners at Arden HMO was held at the Corners at Arden WWTP. An inspection by WVDEP personnel was also conducted at this time during which the following deficiencies were observed and reported:
 - a. No improvements had been made since the previous inspection; holes were observed in the liners of both cells, the UV system was completely non-functional; a manhole at the rear of the facility was overflowing raw influent, which then ran into the nearby storm water holding area; both sand filter cells were ponded and stagnant; the grass inside the facility was unkempt; a stagnant, septic odor existed around the facility; the effluent appeared to be clouding the stream; the permittee did not have a key to the facility. These all illustrate a failure to properly operate and maintain the facility and are violations of its WV/NPDES permit (Section F.1). NOV No. 09-02-31-224 was issued.
 - b. Pond two was overflowing its banks; a manhole at the rear of the facility was overflowing raw influent; both of these discharges were going to the nearby storm water holding area with discharges to the nearby receiving stream. These all illustrate unpermitted discharges of untreated sewage, a violation of §22-11-8.b.1.
5. On August 25, 2009, WVDEP Personnel conducted an inspection and observed and documented the following deficiencies:
 - a. Influent pumps had been repaired, but continued to regularly lose function because of large amounts of debris in the influent; no improvements had been made to the sand filter beds, which were ponded and stagnant; a distribution system pipe was broken and gushing water between the beds; it appeared that cell two had recently overflowed. These all illustrate a failure to properly operate and maintain the facility and are violations of its WV/NPDES permit (section F.1). NOV No. 09-02-53-224 was issued.
6. On November 3, 2009, WVDEP personnel met with representatives from the Corners at Arden HMO and Clifton Browning, Manager of Operations for the BCPSSD, to discuss the pending remediation of the Corners at Arden WWTP by the BCPSSD. An inspection by WVDEP Personnel was also conducted at this time with the following deficiencies observed and reported:

- a. The broken pipe observed during the previous inspection had been repaired. Otherwise, no further improvements were observed. All other deficiencies listed on the previous inspection report were still present, which illustrate a failure to properly operate and maintain the facility and are violations of its WV/NPDES permit (Section F.1). NOV No. 09-02-71-224 was issued.
7. On February 2, 2010, WVDEP personnel attempted to perform an inspection at the Corners at Arden WWTP. An inspection was not possible because the road leading to the facility had not been cleared of snow. It did not appear that anyone had attempted to access the facility as no tracks were visible in the snow. All other treatment plants visited recently in the area had been cleared and serviced.
8. On March 30, 2010, WVDEP personnel conducted an inspection at the Corners at Arden WWTP and observed and documented the following deficiencies:
 - a. It appeared that the facility had been completely neglected since the previous inspection. Both sand filter cells were dry and appeared to not have had water in them for quite some time. During all previous inspections the beds were ponded. All deficiencies mentioned in the previous inspection were still present. The UV disinfection chamber was completely flooded. The UV lights were not visible and appeared to be non-functional. All of these illustrate a failure to properly operate and maintain the facility and are violations of its WV/NPDES permit (Section F.1). NOV No. 10-02-28-224 was issued.
 - b. Influent was observed to be flowing at a constant rate out of a manhole at the rear of the plant. This influent was then flowing into the nearby storm water retention area. The pipe from the storm water retention area to the nearby receiving stream appeared to be discharging at a rate of about four gallons per minute. No unpermitted bypasses or spills had been called in for this facility since the previous inspection. All of these illustrate a failure to properly report and stop an unpermitted bypass/spill, a violation of its WV/NPDES permit (Section C.1). NOV No. 10-02-31-224 was issued.
 - c. Visible solids and a white stringy substance were observed in the path created by the untreated septic waste water to the storm water retention area, in the storm water retention area and on the path from the discharge pipe of the storm water retention area to the receiving stream. A very strong septic odor was present in the vicinity of the entire facility. These illustrate causing visible solids and odors in the waters of the State and are violations of 47CSR2-3.2. NOV No. 10-02-30-224 was issued.
9. On March 31, 2010, an email was sent by WVDEP personnel to Susan Bridges, a representative for the Corners at Arden HMO, regarding the findings of the previous day's inspection and also advising that the unpermitted bypass needed to be stopped immediately.
10. On April 6, 2010, WVDEP personnel inspected the Corners at Arden WWTP to confirm the status of the unpermitted bypass. The manhole at the rear of the facility continued to overflow at a constant rate and had been, at this time, doing so for seven days.

11. On April 12, 2010, WVDEP personnel spoke to Susan Bridges, a representative for the Corners at Arden HMO, via telephone. At that time, Mrs. Bridges indicated that Corners at Arden HMO did not currently have any plans to stop the unpermitted bypass or to correct the deficiencies at the WWTP. Ms. Bridges also indicated at this time that WVDEP personnel could contact the Corners at Arden HMO's lawyer with any further questions.
12. On April 13, 2010, WVDEP personnel inspected the Corners at Arden WWTP to observe the impact of the unpermitted bypass on the receiving stream and observed and reported the following deficiencies:
 - a. The stream appeared to become a milky color at the point of the combined storm water/untreated septic waste water outlet. Round white growths were observed to be growing at the point of discharge to about 15 (fifteen) to 20 (twenty) feet downstream; a strong septic odor was evident around the outlet and further downstream. These illustrate causing an observable color and odor in the waters of the State and are violations of 47CSR2-3.2.
 - b. It was also noted at this time that the unpermitted bypass had not been stopped. It had been seven days since the previous check on the bypass. This illustrates a failure to properly report and stop an unpermitted bypass/spill, a violation of its WV/NPDES permit (Section C.1).
13. On May 17, 2010, a records review confirmed that Discharge Monitoring Reports (DMRs) had not been received from the 1st Quarter 2008 through 1st Quarter 2010. This is a violation of its WV/NPDES permit (Section B.3). NOV's No. W09-02-54-224, W10-02-72-224, and W10-02-29-224 had previously been issued for non-submittal of DMRs.
14. On September 2, 2010, WV/NPDES Permit No. WV0103110, General Permit Registration No. WVG550966 was transferred from Corners at Arden HMO to Berkley County PSSD.
15. On September 13th, 2010, WVDEP issued unilateral Order No. 7119 to Berkley County PSSD, directing the permittee to correct deficiencies associated with the operation and maintenance of this facility.
16. On September 27, 2010, WVDEP personnel completed an inspection at the Corners at Arden HMO. The following conditions were observed and documented:
 - a. Historic discharges caused deposits of sludge which continue to remain in the receiving stream in violation of 47CSR2-3.2.b (Conditions not Allowable).
 - b. Waste filter media has been removed from the treatment plant and stored at the facility.
17. A meeting was held between WVDEP and Corners at Arden HMO on November 29, 2010 to discuss the terms of this Order. Corners at Arden HMO provided financial documentation that demonstrated 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. Corners at Arden HMO shall immediately take all measures to initiate compliance with all terms and conditions of this Order.
2. Because of Corners at Arden HMO's WV Code, Legislative Rule, and permit violations, Corners at Arden HMO shall be assessed a civil administrative penalty of three thousand thirty dollars (\$3,030) 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 \$1,515 due on or before May 1, 2011.

Payment 2 in the amount of \$1,515 due on or before June 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. Corners at Arden HMO 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, Corners at Arden HMO 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, Corners at Arden HMO 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 Corners at Arden HMO 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, Corners at Arden HMO 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 Corners at Arden HMO 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 Corners at Arden HMO 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 Corners at Arden HMO (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 Corners at Arden HMO 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 Corners at Arden HMO 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 Corners at Arden HMO, its successors and assigns.
7. This Order shall terminate upon Corners at Arden HMO's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Shannon McDonald, President
Corners at Arden HMO

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date