



west virginia department of environmental protection

Division of Water and Waste Management
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Charleston, WV 25304
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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: Lloyd Plumley
Glade View MHP
879 Pluto Rd.
Shady Spring, WV 25918

DATE: May 23, 2011

ORDER NO.: 7181

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 Lloyd Plumley/Glade View MHP (hereinafter, "Mr. Plumley").

FINDINGS OF FACT

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

1. Mr. Plumley operates a sewage treatment facility located near Shady Spring, Raleigh County, West Virginia. Mr. Plumley was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG550898 on August 11, 2004. Permit coverage has been renewed through September 23, 2015.
2. On November 8, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, the following violations of the terms and conditions of Mr. Plumley's WV/NPDES permit were observed and documented:
 - a. Facility does not have chlorine tablets in the disinfection unit. Facility has no chlorine contact tank or dechlorination system installed (Section F.1.).
 - b. Permittee has reported numerous excursions of the permit effluent limitations for fecal Coliform for years (Section A.1.A.).

As a result of the aforementioned violations, Notice of Violation No. W10-41-11/8/2020-02-RHG was issued to Mr. Plumley.

3. On December 15, 2010, WVDEP personnel conducted a review of the facility's files from the time period of January 2009-September 2010. During this review, the following violations of the terms and conditions of Mr. Plumley's WV/NPDES permit were observed:
 - a. Twenty-six (26) exceedances of Mr. Plumley's permit parameters were observed and documented (See Table 1). Each exceedance is a violation of the terms and conditions of Mr. Plumley's WV/NPDES permit (Section A.1.A.). These exceedances can be further defined as:
 - i. Minor violations-1
 - ii. Moderate violations-8
 - iii. Major violations-17
4. A meeting between WVDEP and Mr. Plumley was held on January 12, 2011 to discuss the terms of this Order. Subsequent to the meeting, Mr. Plumley provided financial information which demonstrated a reduced ability to pay the civil administrative penalty associated with this Order.

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. Mr. Plumley shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within twenty (20) days of entry of this Order, Mr. Plumley shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Mr. Plumley will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SE Regional Environmental Enforcement Office
254 Industrial Drive
Oak Hill, WV 25901**

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 Mr. Plumley's permit violations, Mr. Plumley shall be assessed a civil administrative penalty of one thousand two hundred dollars (\$1,200) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following payment schedule:

Payment 1 in the amount of \$100 due on or before August 1, 2011.
Payment 2 in the amount of \$100 due on or before September 1, 2011.
Payment 3 in the amount of \$100 due on or before October 1, 2011.
Payment 4 in the amount of \$100 due on or before November 1, 2011.
Payment 5 in the amount of \$100 due on or before December 1, 2011.
Payment 6 in the amount of \$100 due on or before January 1, 2012.
Payment 7 in the amount of \$100 due on or before February 1, 2012.
Payment 8 in the amount of \$100 due on or before March 1, 2012.
Payment 9 in the amount of \$100 due on or before April 1, 2012.
Payment 10 in the amount of \$100 due on or before May 1, 2012.
Payment 11 in the amount of \$100 due on or before June 1, 2012.
Payment 12 in the amount of \$100 due on or before July 1, 2012.

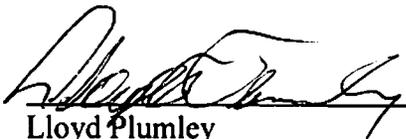
Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

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

OTHER PROVISIONS

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



Lloyd Plumley
Glade View MHP

6-3-11

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

RECEIVED
JUN -6 2011
ENVIRONMENTAL
ENFORCEMENT

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JUN - 8 2011
ENVIRONMENTAL ENFORCEMENT

Table 1

Outlet 001 DMR Exceedances - AVG. MONTHLY - January 2009 through September 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
1st qtr 2009	TSS	mg/l	30.0	36	20%	X	-	-
1st qtr 2009	Fecal Coliform	cts/100 ml	200.0	24000	11900%	-	-	X
1st qtr 2009	TRC	ug/l	100.0	1300	1200%	-	-	X
2nd qtr 2009	Fecal Coliform	cts/100 ml	200.0	400	100%	-	X	-
2nd qtr 2009	TRC	ug/l	100.0	570	470%	-	-	X
4th qtr 2009	Fecal Coliform	cts/100 ml	200.00	18200	9000%	-	-	X
1st qtr 2010	Fecal Coliform	cts/100 ml	200.00	22000	10900%	-	-	X
2nd qtr 2010	TRC	ug/l	100.00	2240	2140%	-	-	X
3rd qtr 2010	Fecal Coliform	cts/100 ml	200.00	1620	710%	-	-	X
3rd qtr 2010	TRC	ug/l	100.00	220	120%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY - January 2009 through September 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
1st qtr 2009	Fecal Coliform	cts/100 ml	400.00	24000	5900%	-	-	X
1st qtr 2009	TRC	ug/l	100.00	1300	1200%	-	-	X
2nd qtr 2009	TRC	ug/l	100.00	570	470%	-	X	-
4th qtr 2009	Fecal Coliform	cts/100 ml	400.00	18200	4450%	-	-	X
1st qtr 2010	Fecal Coliform	cts/100 ml	400.00	22000	5400%	-	-	X
2nd qtr 2010	TRC	ug/l	100.00	2240	2140%	-	-	X
3rd qtr 2010	Fecal Coliform	cts/100 ml	400.00	1620	305%	-	X	-
3rd qtr 2010	TRC	ug/l	100.00	220	120%	-	X	-

Outlet 001 DMR Exceedances - INSTANTANEOUS. MAX. - January 2009 through September 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
1st qtr 2009	Fecal Coliform	cts/100 ml	500.00	24000	4700%	-	-	X
1st qtr 2009	TRC	ug/l	100.00	1300	1200%	-	-	X
2nd qtr 2009	TRC	ug/l	100.00	570	470%	-	X	-
4th qtr 2009	Fecal Coliform	cts/100 ml	500.00	18200	3540%	-	-	X
1st qtr 2010	Fecal Coliform	cts/100 ml	500.00	22000	4300%	-	-	X
2nd qtr 2010	TRC	ug/l	100.00	2240	2140%	-	-	X
3rd qtr 2010	Fecal Coliform	cts/100 ml	500.00	1620	224%	-	X	-
3rd qtr 2010	TRC	ug/l	100.00	220	120%	-	X	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	1	8	17

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Lloyd Plumley Receiving Stream: Glade Creek

Treatment System Design Maximum Flow: 0.0074 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.a	3.a.i.	3.a.ii.	3.a.iii.								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	1	1	1								
c)	Sensitivity of the Environment	0 to 3	1	3	3	3								
d)	Length of Time	1 to 3	1	1	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1								
Average Potential for Harm Factor			1	1.4	1.4	1.4	No							
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	1	1	2	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 -	10		\$7,320
6.2.b.4 - Compliance/noncompliance history	10		\$7,320
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)		40	(\$29,280)
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)		\$57,390	(\$57,390)
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			(\$72,000)
Penalty =			\$1,200

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:	