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ENVIRONMENTAL  
ENFORCEMENT

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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
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: Indian Head Homeowner's Association, Inc.      DATE: March 16, 2011  
David Duncan, Treasurer  
P.O. Box 865      ORDER NO.: 7179  
St. Albans, WV 25177

**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 Indian Head Homeowner's Association, Inc. (hereinafter "Indian Head").

**FINDINGS OF FACT**

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

1. Indian Head operates two sewage treatment plants located in St. Albans, Kanawha County, West Virginia. Indian Head was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration Nos. WVG550608 and WVG550627 on June 16, 2005, both administratively extended to January 13, 2011.
2. On November 19, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel conducted inspections of Indian Head Sewage Treatment Plant 1 and Indian Head Sewage Treatment Plant 2.
3. On November 19, 2010 WVDEP personnel determined that Indian Head had failed to properly operate and maintain the facilities, a violation of section F.1 of its permit. Skimmers were not operating properly in either plant and both chlorine contact chambers were turbid. Notice of Violation (NOV) Nos. W10-20-85-KWS and W10-20-87-KWS were issued for these deficiencies.

Promoting a healthy environment.

4. On November 19, 2010 WVDEP personnel observed and documented the effluent from both facilities causing distinctly visible suspended solids in waters of the state, a violation of Legislative Rule Title 47, Series 2, Section 3.2.a (47CSR2-3.2a.). NOV Nos. W10-20-86-KWS and W10-20-88-KWS were issued for these deficiencies.
5. Indian Head has failed to submit Discharge Monitoring Reports (DMRs) for either facility since the 1<sup>st</sup> quarter of 2008, a violation of Section B.2. of its permit.
6. On December 14, 2010, DMRs for the 1<sup>st</sup> quarter of 2009 to present were provided to WVDEP.
7. The discharge of pollutants into state waters by Indian Head in amounts that exceed permitted limitations were noted in seven of the most recent seven of these quarterly DMR reports for Indian Head #1. These permit excursions are further described and detailed in attached "Table of DMR Exceedances." This table is summarized as follows:
  - a. 10 minor exceedances on permitted discharge limitations.
  - b. 10 moderate exceedances on permitted discharge limitations.
  - c. 15 major exceedances on permitted discharge limitations.
8. The discharge of pollutants into state waters by Indian Head in amounts that exceed permitted limitations were noted in six of the most recent seven of these quarterly DMR reports for Indian Head #2. These permit excursions are further described and detailed in attached "Table of DMR Exceedances." This table is summarized as follows:
  - a. 5 minor exceedances on permitted discharge limitations.
  - b. 12 moderate exceedances on permitted discharge limitations.
  - c. 10 major exceedances on permitted discharge limitations.
9. A meeting between WVDEP and Indian Head was held on January 28, 2011 to discuss the terms of this Order. Subsequent to the meeting, Indian Head submitted financial documentation which demonstrated that it has a reduced ability to pay a civil administrative penalty.
10. Indian Head has submitted a Plan of Corrective Action ("Plan") for its facilities to WVDEP. The Plan was approved on February 8, 2011. The approved Plan and its schedule are hereby incorporated into 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. Indian Head shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Indian Head shall immediately begin to comply with the schedule of its approved Plan of Corrective Action, which is incorporated into and part of this Order.

3. Because of Indian Head's Legislative Rule and permit violations, Indian Head shall be assessed a civil administrative penalty of forty-five thousand thirty dollars (\$45,030) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

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



Indian Head Homeowners Assoc., Inc.

~~Carman Brooks~~, Treasurer

DAVID DUNCAN

MARCH 23, 2011

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: Indian Head Homeowner's Association Receiving Stream: Coal River

Treatment System Design Maximum Flow: \_\_\_\_\_ 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#												
			3	4	5	7a	7b	7c	8a	8b	8c				
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1				
b)	Toxicity of Pollutant	0 to 3	0	1	0	1	1	1	1	1	1				
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1	1	1	1				
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1				
e)	Actual Exposure and Effects thereon	0 to 3	0	1	0	1	1	1	1	1	1				
<b>Average Potential for Harm Factor</b>			0.6	1	0.6	1	1	1	1	1	1	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	1	1	3	1	2	3	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.



		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
3	Minor	Minor	\$600	2	\$1,200
4	Minor	Minor	\$1,000	2	\$2,000
5	Minor	Major	\$1,800	14	\$25,200
7a	Minor	Minor	\$1,000	10	\$10,000
7b	Minor	Moderate	\$1,500	10	\$15,000
7c	Minor	Major	\$2,000	15	\$30,000
8a	Minor	Minor	\$1,000	5	\$5,000
8b	Minor	Moderate	\$1,500	12	\$18,000
8c	Minor	Major	\$2,000	10	\$20,000
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
<b>Total Base Penalty</b>					<b>\$126,400</b>

## 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)		\$81,400	(\$81,400)
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
<b>Penalty Adjustments</b>			<b>(\$81,370)</b>
<b>Penalty =</b>			<b>\$45,030</b>

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	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b>	