



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: J Lynn Farms
James Dale Ashley
30 Ashley Rd.
Reedy, WV 25270

DATE: June 18, 2015

ORDER NO.: 8108

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 J Lynn Farms (hereinafter "J Lynn").

FINDINGS OF FACT

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

1. J Lynn operates a dairy farm located near Reedy, Roane County, West Virginia.
2. On April 15, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an investigation of a reported sewage release on Bear Run of Spring Creek near Reedy, Roane County, West Virginia. During the inspection, violations of the following sections of WV Legislative Rules were observed and documented:
 - a. 47CSR2 Section 3.2.a – J Lynn created conditions not allowable in waters of the State. Specifically, a large dark plume of distinctly visible floating, settleable, or suspended solids was observed in Bear Run. The plume was traced back to its source, a discharge from a manure pond located within J Lynn Farms.
 - b. 47CSR2 Section 3.2.e – J Lynn created conditions not allowable in waters of the State. Specifically, J Lynn discharged wastewater into the stream in concentrations which were harmful, hazardous or toxic to man, animal, or aquatic life, as evidenced by the observation of dead fish in the Bear Run plume. In addition, a sample

Promoting a healthy environment.

collected by WVDEP personnel revealed BOD₅ of less than 2 milligrams per liter (mg/l) upstream of the Bear Run confluence with the J Lynn pond discharge. However, a BOD₅ result of 34 mg/l was determined for a sample collected at the confluence of the J Lynn pond discharge into Bear Run, further supporting the determination that J Lynn contributed to conditions not allowable in waters of the State.

As a result of the aforementioned violations, Notice of Violation (NOV) No. S14-44-GSR was issued to J Lynn.

3. On July 22, 2014, WVDEP personnel and representatives of J Lynn met to discuss the terms and conditions of this Order. During the meeting, WVDEP personnel determined that the likelihood of further discharges into waters of the State had been significantly reduced due to upgrades J Lynn made to the pond system after the occurrence of the aforementioned violations.

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. J Lynn shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of J Lynn's Legislative Rule violations, J Lynn shall be assessed a civil administrative penalty of nine thousand two hundred thirty dollars (\$9,230). Eight thousand thirty dollars (\$8,030) of the civil administrative penalty shall be held in abeyance for a two (2) year period after the effective date of this Order. The remaining one thousand two hundred dollars (\$1,200) of the civil administrative penalty shall 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.

J Lynn agrees to pay the eight thousand thirty dollars (\$8,030) held in abeyance within thirty (30) days of notice from WVDEP that J Lynn has, at any time within the two (2) year period after the effective date of this Order, created conditions not allowable in waters of the State, as described in WV Legislative Rule 47CSR2 Section 3.2.

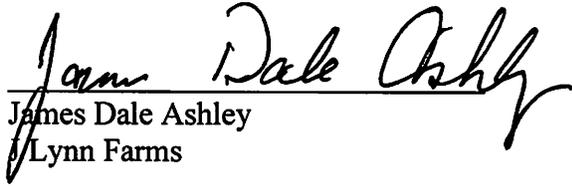
Payments made pursuant to this paragraph are not tax-deductible for purposes of state or federal law. **Payment shall be mailed to:**

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

OTHER PROVISIONS

1. J Lynn 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, J Lynn 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, J Lynn 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 J Lynn 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, J Lynn 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 J Lynn becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and J Lynn 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 J Lynn 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 J Lynn (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 J Lynn 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 J Lynn 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 J Lynn, its successors and assigns.

7. This Order shall terminate upon J Lynn's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


James Dale Ashley
Lynn Farms

June 26 2015
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised January 2013

RECEIVED

JUN 29 2015

**ENVIRONMENTAL
ENFORCEMENT**



Dark water below low water bridge on Bear Run (04/15/14)



Fish above low water bridge on Bear Run (04/15/14)



Dark plume from tributary flowing into Bear Run (04/15/14)



Manure ponds at J Lynn Farms (04/15/14)



Outlet from manure pond one to manure pond two (04/15/14)



Outlet from manure pond two (04/15/14)



Flow from manure pond two to tributary of Bear Run (04/15/14)



Bear Run 100 yds below confluence from J Lynn Farms (04/15/14)



Plume from J Lynn Farms entering Bear Run (04/15/14)



Additional view of plume from J Lynn Farms (04/15/14)



Close view of plume entering Bear Run (04/15/14)



View of Bear Run above confluence of plume from J Lynn Farms (04/15/14)

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: J Lynn Farms **Receiving Stream:** Bear Run

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#											
			2a	2b										
a)	Amount of Pollutant Released	1 to 3	3	3										
b)	Toxicity of Pollutant	0 to 3	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1										
d)	Length of Time	1 to 3	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	2	2										
Average Potential for Harm Factor			1.6	1.6	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 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			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$9,230

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:	