



west virginia department of environmental protection

Environmental Enforcement
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0470 Fax: (304) 926-0488

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

January 6, 2012

Mossy T&C, LLC
Attn: Thomas D. Miller
139 Okey L. Patteson Rd.
Scarbro, WV 25917

CERTIFIED RETURN RECEIPT REQUESTED

91 7199 9991 7030 8755 8746

**RE: Violation of Chapter 22, Article 11
of the WV State Code**

Dear Mr. Miller:

Enclosed is 2nd revised CONSENT ORDER NUMBER 7226 dated the 6th day of January, 2012. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to Mossy T&C, LLC violating Chapter 22, Article 11 of the WV State Code at its facility located in Mossy, Fayette County, West Virginia. This revision is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,

Michael A. Zeto
Chief Inspector

Enclosure

cc: Scott G. Mandirola, Director, DWWM (via e-mail)
Yogesh Patel, Asst. Director, DWWM/Permits
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
Laura McGee, Environmental Resources Specialist, EE (via e-mail)
Kevin Lilly, Environmental Inspector Specialist, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)

revised January 2011

Promoting a healthy environment.



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Division of Water and Waste Management
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Earl Ray Tomblin, Governor
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Mossy T&C, LLC
Attn: Thomas D. Miller
139 Okey L. Patteson Rd.
Scarbro, WV 25917

DATE: January 6, 2012

ORDER NO.: 7226

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 Mossy T&C, LLC (hereinafter "Mossy T&C").

FINDINGS OF FACT

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

1. Mossy T&C operates a sewage treatment facility located near Mossy, Fayette County, West Virginia. Mossy T&C was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG551231 on April 24, 2005. Permit coverage has been extended until July 13, 2011.
2. On November 3, 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 Mossy T&C's WV/NPDES permit were observed and documented:
 - a. Clarifier and Contact Tank are covered with sludge (this violation was also observed on June 28, 2010) (Section F.1.).
3. On March 14, 2011, WVDEP personnel conducted a review of the facility's files from the time period of January 2009-December 2010. During this review, the following

violations of the terms and conditions of Mossy T&C's WV/NPDES permit were observed:

- a. Twenty-One (21) exceedances of Mossy T&C's permit parameters were observed and documented (See Table 1). Each exceedance is a violation of the terms and conditions of Mossy T&C's WV/NPDES permit (Section A.1.). These exceedances can be further defined as:
 - i. Minor violations-8
 - ii. Moderate violations-6
 - iii. Major violations-7
4. A meeting was held between WVDEP and Mossy T&C on May 7, 2011 to discuss the terms of this Order. Mossy has submitted documentation which indicates that it has had the treatment plant pumped and that its sludge problem has been eliminated.
5. Subsequent to the meeting Mossy provided financial information which demonstrates that it has the ability to pay the civil administrative penalty contained within 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. Mossy T&C 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, Mossy T&C shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Mossy T&C will achieve compliance with all terms and conditions of its WV/NPDES permit and/or pertinent laws and rules. 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 Mossy T&C's permit violations, Mossy T&C shall be assessed a civil administrative penalty of ten thousand four hundred thirty dollars (\$10,430) 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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Mossy T&C 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, Mossy T&C 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, Mossy T&C 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 Mossy T&C 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, Mossy T&C 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 Mossy T&C 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 Mossy T&C 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 Mossy T&C (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 Mossy T&C 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 Mossy T&C 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 Mossy T&C, its successors and assigns.
7. This Order shall terminate upon Mossy T&C's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Thomas D. Miller
Mossy T&C, LLC

Date

Public Notice begin: _____

Date

Public Notice end: _____

Date

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

Date

Table 1

Outlet 001 DMR Exceedances - AVG. MONTHLY - January 2009 through December 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
2nd Qtr 2009	Fecal Coliform	cts/100 ml	200.0	2360	1080%	-	-	X
3rd Qtr 2009	BOD	mg/l	30.0	38.8	29%	X	-	-
3rd Qtr 2009	Fecal Coliform	cts/100 ml	200.0	200000	99900%	-	-	X
4th Qtr 2009	TSS	mg/l	30.0	32	7%	X	-	-
4th Qtr 2009	Fecal Coliform	cts/100 ml	200.0	680	240%	-	X	-
1st Qtr 2010	BOD	mg/l	30.00	41	37%	X	-	-
2nd Qtr 2010	BOD	mg/l	30.00	76.8	156%	-	X	-
2nd Qtr 2010	TSS	mg/l	30.00	44	47%	-	X	-
2nd Qtr 2010	Fecal Coliform	cts/100 ml	200.00	15500	7650%	-	-	X
4th Qtr 2010	BOD	mg/l	30.00	34.7	16%	X	-	-
4th Qtr 2010	TSS	mg/l	30.00	44	47%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY - January 2009 through December 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
2nd Qtr 2009	Fecal Coliform	cts/100 ml	400.00	2360	490%	-	X	-
3rd Qtr 2009	Fecal Coliform	cts/100 ml	400.00	200000	49900%	-	-	X
4th Qtr 2009	Fecal Coliform	cts/100 ml	400.00	680	70%	X	-	-
2nd Qtr 2010	BOD	mg/l	60.00	76.8	28%	X	-	-
2nd Qtr 2010	Fecal Coliform	cts/100 ml	400.00	15500	3775%	-	-	X

Outlet 001 DMR Exceedances - INSTANTANEOUS, MAX. - January 2009 through December 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
2nd Qtr 2009	Fecal Coliform	cts/100 ml	500.00	2360	372%	-	X	-
3rd Qtr 2009	Fecal Coliform	cts/100 ml	500.00	200000	39900%	-	-	X
4th Qtr 2009	Fecal Coliform	cts/100 ml	500.00	680	36%	X	-	-
2nd Qtr 2010	BOD	mg/l	75.00	76.8	2%	X	-	-
2nd Qtr 2010	Fecal Coliform	cts/100 ml	500.00	15500	3000%	-	-	X

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	8	6	7

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Mossy T&C LLC.

Receiving Stream:

Paint Creek

Treatment System Design Maximum Flow: 0.007 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.	3a.i.	3a.ii.	3a.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	1	1	1										
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	1	1	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		\$1,600
6.2.b.4 - Compliance/noncompliance history	5		\$800
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	(\$6,400)
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		10	(\$1,600)
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$5,570)
Penalty =			\$10,430

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:	