



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: Mountain Greenery Manor Subdivision
ATTN: Michael G. Alexander, President
RR 3, Box 304B, Halls Ridge
Princeton, WV 25740

DATE: March 29, 2011

ORDER NO.: 7193

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 Mountain Greenery Manor Subdivision (hereinafter "MGMS").

FINDINGS OF FACT

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

1. MGMS operates a sewage treatment facility near Princeton, Mercer County, West Virginia. MGMS was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG550088 on March 1, 2005. Permit coverage has been administratively extended until January 13, 2011.
2. On January 16, 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 MGMS's WV/NPDES permit were observed and documented:
 - a. Permittee is failing to submit copies of the quarterly Discharge Monitoring Reports (DMRs) to WVDEP's Water & Waste Office in Oak Hill and Charleston (Section B.1.).

As a result of the aforementioned violations, Notice of Violation No. 09116-3 was issued to MGMS.

Promoting a healthy environment.

3. On August 13, 2010, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violations of the terms and conditions of MGMS's WV/NPDES permit were observed and documented:
 - a. Permittee has exceeded limitations for Fecal Coliform, BOD, and Ammonia Nitrogen for a total of 24 excursions for 2nd Quarter 2008-1st Quarter 2009 (Section A.3.).
 - b. Permittee is submitting DMRs on an unapproved form. Permittee is not sampling for Total Residual Chlorine, Total Phosphorus and Total Nitrogen as directed in Treatment Category III (Section B.2.).
 - c. Failed to properly operate and maintain its wastewater treatment system: The Chlorine contact chamber is insufficient for the amount of flow received. Duckweed is covering the surface of both ponds. Operation and Maintenance records need to be maintained on-site (Section F.1.).
 - d. Permittee failed to employ an operator possessing a Class 1-S wastewater treatment plant operator's certificate as issued by the State of WV (Section G.3.).
 - e. Permittee failed to submit copies of the Annual Sludge Management Report to WVDEP's Water & Waste Office in Charleston (Section H.4.).

As a result of the aforementioned violations, Notice of Violation No. I-09-8-13-1-MDP was issued to MGMS.

4. On September 8, 2010, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violations of the terms and conditions of MGMS's WV/NPDES permit were observed and documented:
 - a. Permittee is not sampling for Total Residual Chlorine, Total Phosphorus and Total Nitrogen as directed in Treatment Category III. Permittee is submitting DMRs on an unapproved form (Section B.2.).
 - b. Failed to properly operate and maintain its wastewater treatment system: The Chlorine contact chamber is insufficient for the amount of flow received. Duckweed is covering the surface of both ponds. Operation and Maintenance records need to be maintained on-site (Section F.1.).
 - c. Failure of permittee to possess a Class 1-S Wastewater treatment plant operator's certificate as issued by the State of WV (Section G.3.).
 - d. Permittee failed to submit copies of the Annual Sludge Management Report to the DEP's Water & Waste Office in Charleston (Section H.4.).

As a result of the aforementioned violations, Notice of Violation No. W-28-10-9-8-MDP-1 was issued to MGMS.

5. On January 10, 2011, 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 MGMS's WV/NPDES permit were observed:
 - a. Twenty-four (24) exceedances of MGMS's permit parameters were observed and documented (See Table 1). Each exceedance is a violation of the terms and

- conditions of MGMS's WV/NPDES permit (Section A.3.). These exceedances can be further defined as:
- i. Minor violations-9
 - ii. Moderate violations-9
 - iii. Major violations-6
- b. Permittee failed to submit the required DMRs for 3rd quarter 2009 and 2nd quarter 2010 (Section B.1.).
 - c. Permittee is not utilizing the correct DMRs when reporting sampling results to WVDEP, and is not sampling, as required, for Total Nitrogen and Total Phosphorus (Section B.2.).
6. A meeting between WVDEP and MGMS was held on February 9, 2011 to discuss the terms of this Order. Subsequent to the meeting, MGMS has submitted financial documentation which demonstrates that it has 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. MGMS 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, MGMS shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when MGMS 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 MGMS's permit violations, MGMS shall be assessed a civil administrative penalty of one thousand two hundred thirty dollars (\$1,230) 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 \$410 due on or before July 1, 2011

Payment 2 in the amount of \$410 due on or before August 1, 2011

Payment 3 in the amount of \$410 due on or before September 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. MGMS 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, MGMS 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, MGMS 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 MGMS 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, MGMS 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 MGMS 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 MGMS 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 MGMS (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 MGMS 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 MGMS 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 MGMS, its successors and assigns.
7. This Order shall terminate upon MGMS's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Michael G. Alexander, President
Mountain Greenery Manor Subdivision

3-31-11
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

The undersigned hereby certifies that the information furnished herein is true and correct to the best of his knowledge and belief.

Witness my hand and seal this 1st day of January, 1964.

[Signature]

Notary Public for the State of California

My commission expires on _____

1/1/64

[Signature]

Notary

Notary Public for the State of California

Notary Public for the State of California

Notary

Notary Public for the State of California

Notary

Notary

Notary Public for the State of California

Notary Public for the State of California

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Mountain Greenery Manor Subdivision Receiving Stream: UT of Five Mile Creek

Treatment System Design Maximum Flow: 1960 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	3b, 4a, 5c	3c, 4b	3d, 4c	3e, 4d	5ai	5aii	5aiii	5b					
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1				
b)	Toxicity of Pollutant	0 to 3	0	0	1	1	0	1	1	1	1	0				
c)	Sensitivity of the Environment	0 to 3	0	0	1	1	0	1	1	1	1	0				
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1				
e)	Actual Exposure and Effects thereon	0 to 3	0	0	1	1	0	1	1	1	1	0				
Average Potential for Harm Factor			0.4	0.4	1	1	0.4	1	1	1	1	0.4	No	No	No	No
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	1	1	1	1	1	1	2	3	1					

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
2a	Minor	Minor	\$400	1	\$400
3b, 4a, 5c	Minor	Minor	\$400	3	\$1,200
3c, 4b	Minor	Minor	\$1,000	2	\$2,000
3d, 4c	Minor	Minor	\$1,000	2	\$2,000
3e, 4d	Minor	Minor	\$400	2	\$800
5ai	Minor	Minor	\$1,000	6	\$6,000
5aii	Minor	Moderate	\$1,500	6	\$9,000
5aiii	Minor	Major	\$2,000	5	\$10,000
5b	Minor	Minor	\$400	2	\$800
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
Total Base Penalty					\$32,200

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 -	15		\$4,830
6.2.b.4 - Compliance/noncompliance history	30		\$9,660
6.2.b.6 - Economic benefits - (flat monetary increase)	\$555		\$555
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)		50	(\$16,100)
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)		\$29,945	(\$29,945)
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			(\$30,970)
Penalty =			\$1,230

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$555
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	\$555
Comments: Failed to sample TRC (x5)=\$13.65x7=\$68.25, Failed to sample Total Phosphorus (x3)=\$27.30x3=\$81.90, Failed to sample Total Nitrogen (x3)=\$54.60x3=\$163.80, Failed to sample two quarters=\$241.50.	