



west virginia department of environmental protection

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

TO: Randy Petry
c/o
Derrick Lefler, Attorney
Gibson, Lefler & Associates
1345 Mercer Street
Princeton, WV 24740-3033

DATE: March 14, 2011

ORDER NO.: 7178

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 Randy Petry/Parkway Mobile Home Park (hereinafter "Petry").

FINDINGS OF FACT

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

1. Petry operates a sewage treatment facility located at Speedway, Mercer County, West Virginia. Petry was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG550514 on October 20, 2004, which has been administratively extended to January 13, 2011.
2. On May 1, 2009, 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 Petry's WV/NPDES permit were observed and documented:
 - a. Permittee is failing to meet discharge limits as set forth in the permit for BOD, TSS Ammonia Nitrogen, and DO (Section A.3.).
 - b. Turtles must be eliminated from the pond to help prevent TSS violations (Section F.1.).

Promoting a healthy environment.

As a result of the aforementioned violations, Notice of Violation No. I-09-1-05-MDP-28-023 was issued to Petry.

3. On November 11, 2009, WVDEP personnel conducted an inspection of the facility. During the inspection, the following violations of the terms and conditions of Petry's WV/NPDES permit were observed and documented:
 - a. Permittee is failing to meet discharge limits as set forth in the permit for BOD, TSS Ammonia Nitrogen, and DO (Section A.3.).
 - b. Turtles must be eliminated from the pond to help prevent TSS violations, stabilization pond is approximately 30% covered in Duckweed. (Section F.1.).

As a result of the aforementioned violations, Notice of Violation No. I-09-11-09-1-MDP was issued to Petry.

4. On December 10, 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 were observed:
 - a. Thirty-three (33) exceedances of Petry's permit parameters were observed and documented (See Table 1). Each exceedance is a violation of the terms and conditions of Parkway's WV/NPDES permit (Section A.3.). These exceedances can be further defined as:
 - i. Minor violations-7
 - ii. Moderate violations-16
 - iii. Major violations-10
 - b. Permittee failed to submit the required Discharge Monitoring Report (DMR) for 2nd quarter 2010 (Section B.1.).
5. A meeting between WVDEP and Petry was held on February 9, 2011 to discuss the terms of this Order. Subsequent to the meeting, Petry provided financial documentation which demonstrates 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. Petry 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, Petry shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Petry 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**

RECEIVED

MAR 24 2011

A copy of this plan shall be submitted to:

**ENVIRONMENTAL
ENFORCEMENT**

**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 Petry's permit violations, Petry shall be assessed a civil administrative penalty of five thousand six hundred thirty dollars (\$5,630) 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. Petry 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, Petry 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, Petry 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 Petry 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, Petry 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 Petry 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 Petry 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 Petry (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 Petry 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 Petry 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 Petry, its successors and assigns.
7. This Order shall terminate upon Petry's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Randy Petry
Parkway Mobile Home Park

3 - 22 - 11

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 September 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
1st qtr 2009	BOD	mg/l	10.0	66	560%	-	-	X
2nd qtr 2009	BOD	mg/l	5.0	69	1280%	-	-	X
2nd qtr 2009	TSS	mg/l	30.0	61	103%	-	X	-
2nd qtr 2009	Ammonia Nitrogen	mg/l	3.0	8.62	187%	-	X	-
3rd qtr 2009	BOD	mg/l	5.0	65	1200%	-	-	X
3rd qtr 2009	Ammonia Nitrogen	mg/l	3.00	14.7	390%	-	-	X
3rd qtr 2009	Fecal Coliform	cts/100 ml	200.00	3100	1450%	-	-	X
4th qtr 2009	BOD	mg/l	10.00	54	440%	-	-	X
4th qtr 2009	Ammonia Nitrogen	mg/l	6.00	6.79	13%	X	-	-
3rd qtr 2010	BOD	mg/l	5.00	86	1620%	-	-	X
3rd qtr 2010	TSS	mg/l	30.00	70	133%	-	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	BOD	mg/l	20.00	66	230%	-	X	-
2nd qtr 2009	BOD	mg/l	10.00	69	590%	-	X	-
2nd qtr 2009	TSS	mg/l	60.00	61	2%	X	-	-
2nd qtr 2009	Ammonia Nitrogen	mg/l	6.00	8.62	44%	X	-	-
3rd qtr 2009	BOD	mg/l	10.00	65	550%	-	X	-
3rd qtr 2009	Ammonia Nitrogen	mg/l	6.00	14.7	145%	-	X	-
3rd qtr 2009	Fecal Coliform	cts/100 ml	400.00	3100	675%	-	-	X
4th qtr 2009	BOD	mg/l	20.00	54	170%	-	X	-
3rd qtr 2010	BOD	mg/l	10.00	86	760%	-	-	X
3rd qtr 2010	TSS	mg/l	60.00	70	17%	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	BOD	mg/l	25.00	66	164%	-	X	-
2nd qtr 2009	BOD	mg/l	12.50	69	452%	-	X	-
2nd qtr 2009	Ammonia Nitrogen	mg/l	7.50	8.62	15%	X	-	-
3rd qtr 2009	BOD	mg/l	12.50	65	420%	-	X	-
3rd qtr 2009	Ammonia Nitrogen	mg/l	7.50	14.7	96%	X	-	-
3rd qtr 2009	Fecal Coliform	cts/100 ml	500.00	3100	520%	-	X	-
4th qtr 2009	BOD	mg/l	25.00	54	116%	-	X	-
3rd qtr 2010	BOD	mg/l	12.50	86	588%	-	X	-

Table 1

Outlet 001 DMR Exceedances - D.O. INSTANTANEOUS. MIN. - January 2009 through September 20						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
1st qtr 2009	D.O.	mg/l	6.0	1.5	750.0%			X
2nd qtr 2009	D.O.	mg/l	6.0	5.4	100.0%	X		
3rd qtr 2009	D.O.	mg/l	6.0	3	500.0%		X	
3rd qtr 2010	D.O.	mg/l	6.0	3.6	400.0%		X	

Outlet 00X Totals	Degree of non-compliance		
	Min	Mod	Maj
	7	16	10

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Parkway MHP Receiving Stream: Isom Branch

Treatment System Design Maximum Flow: 0.00168 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#														
			3b	4.a.i.	4.a.ii.	4.a.iii.	4.b.										
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	0										
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	0										
d)	Length of Time	1 to 3	1	1	1	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	0										
Average Potential for Harm Factor			1	1	1	1	0.4	No									
2)	Extent of Deviation Factor	Factor Range															
	Degree of Non-Compliance	1 to 3	1	1	2	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 -	10		\$4,270
6.2.b.4 - Compliance/noncompliance history	20		\$8,540
6.2.b.6 - Economic benefits - (flat monetary increase)	\$200		\$200
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	(\$21,350)
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)		\$28,760	(\$28,760)
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			(\$37,070)
Penalty =			\$5,630

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$200
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	\$200
Comments: 1 quarter sampling= approximately \$200	