



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
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Bungalow Woods Home Owners Association
Richard Ojeda, President
Box 600
Holden, WV 25625

DATE: October 28, 2014
ORDER NO.: 8085

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 Bungalow Woods Home Owners Association (hereinafter "Bungalow HOA").

FINDINGS OF FACT

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

1. Bungalow HOA operates a sewage treatment plant located in Logan, Logan County, West Virginia. Bungalow HOA was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration Number WVG551266, on September 11, 2011.
2. On May 16, 2011, West Virginia Department of Environmental Protection (WVDEP) and Bungalow HOA entered into Consent Order No. 7175. The Order was issued in response to Bungalow HOA's failure to obtain a WV/NPDES permit prior to discharging wastewater into waters of the State. The WV/NPDES permit had been voided due to non-payment of fees and was not reissued until September 11, 2011. In addition, the Order was issued because Bungalow HOA failed to submit Discharge Monitoring Reports (DMRs) and caused conditions not allowable in waters of the State.
3. On December 30, 2011, the aforementioned WV/NPDES Permit was again voided due to non-payment of fees. At this time, Bungalow HOA continued to operate the plant and

Promoting a healthy environment.

allowed effluent to discharge into waters of the State without authorization pursuant to a valid WV/NPDES permit, a violation of WV State Code 22-11-8(b)(1).

4. On January 30, 2012, Bungalow HOA was issued Order No. 7543 for its failure to properly operate and maintain the aforementioned facility.
5. On January 22, 2013, the aforementioned WV/NPDES permit was reinstated subsequent to payment of fees.
6. On April 24, 2014, WVDEP personnel conducted a review of facility records from the time period of the 1st Quarter of 2013 to the 1st Quarter of 2014. During this review, the following violations of the terms and conditions of Bungalow HOA's WV/NPDES permit were observed:
 - a. Section A.1 - Five (5) exceedances of Bungalow HOA's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-Three (3)
 - ii. Moderate violations-Two (2)
 - b. Section B.2 – The permittee failed to submit the 1st Quarter of 2014 DMRs within twenty (20) days after the reporting period.
7. On July 30, 2014, WVDEP personnel and representatives of Bungalow HOA met to discuss the terms and conditions of this Order.
8. On August 26, 2014, Bungalow HOA submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Bungalow HOA's ability to pay a civil administrative penalty.
9. On October 27, 2014, WVDEP personnel conducted a review of facility records from the time period of the 2nd Quarter of 2014 to the 3rd Quarter of 2014. During this review, the following violation of the terms and conditions of Bungalow HOA's WV/NPDES permit was observed:
 - a. Section A.1 – One (1) minor exceedance of Bungalow HOA's permit parameters was observed and documented (Table 1).

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. Bungalow HOA shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, Bungalow HOA shall submit for approval a proposed plan of corrective action and schedule, outlining action items and

completion dates for how and when Bungalow HOA will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0103110, Registration Number WVG551266, and Order No. 8085. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

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.

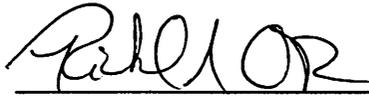
3. Because of Bungalow HOA's permit and WV State Code violations, Bungalow HOA shall be assessed a civil administrative penalty of four thousand eight hundred eighty dollars (\$4,880) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

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

OTHER PROVISIONS

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

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



Richard Ojeda, President
Bungalow Woods Home Owners Association

Nov 3 2014

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013



NOV 06 2014

ENVIRONMENTAL
ENFORCEMENT

Table One: Bungalow HOA DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 1st Qtr 2013 - 3rd Qtr 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
						Mar 2013	Total Suspended Solids	mg/l
June 2013	Total Suspended Solids	mg/l	30	47	57%	-	X	-
Sept 2013	Total Suspended Solids	mg/l	30	73	143%	-	X	-
Dec 2013	In conduit flow	mgd	0.011	0.014	27%	X	-	-

Outlet 001 DMR Exceedances - MAX. DAILY - 1st Qtr 2013 - 3rd Qtr 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
						Sept 2013	Total Suspended Solids	mg/l
Sept 2014	Flow	mgd	0.011	0.012	9%	X	-	-

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		4	2	0

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Bungalow Home Association **Receiving Stream:** Cooperas Mine Fork

Treatment System Design Maximum Flow: 0.011 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	6ai	6aii	6b										
a)	Amount of Pollutant Released	1 to 3	1	1	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1	1	0										
c)	Sensitivity of the Environment	0 to 3	1	1	1	0										
d)	Length of Time	1 to 3	1	1	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	0										
Average Potential for Harm Factor			1	1	1	0.4	No									
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	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.

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 employs or is part of a corporation that employs 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)		30	(\$2,910)
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	(\$970)
6.2.b.3 - Cooperation with the Secretary		10	(\$970)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$4,820)
Penalty =			\$4,880

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:	