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west virginia department of environmental protection

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Environmental Enforcement  
601 57<sup>th</sup> 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

August 29, 2012

Honorable Robert L. Shafer, Mayor  
City of Summersville  
PO Box 525  
Summersville, WV 25561

**CERTIFIED RETURN RECEIPT REQUESTED**

91 7199 9991 7031 5446 0095

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

Dear Mayor Shafer:

Enclosed is 2<sup>nd</sup> revised CONSENT ORDER NUMBER 7369 dated August 29, 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 City of Summersville violating Chapter 22, Article 11 of the WV State Code at its facility located in Summersville, Nicholas County, West Virginia. This revision is based upon your recent meetings with agency personnel and the WVDEP Cabinet Secretary. 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: Randy Huffman, Cabinet Secretary (via e-mail)  
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)  
Deborah L. Keener, Environmental Inspector Supervisor, EE/WW (via e-mail)  
Newt Harman, Environmental Inspector, EE/WW (via e-mail)  
Shyrel Moellendick, MSSS, EE (via e-mail)



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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: (304) 926-0495  
Fax: (304) 926-0463

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

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

TO: Honorable Robert L. Shafer, Mayor  
City of Summersville  
PO Box 525  
Summersville, WV 25561

DATE: August 29, 2012

ORDER NO.: 7369

**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 the City of Summersville (hereinafter "Summersville").

**FINDINGS OF FACT**

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

1. Summersville operates a wastewater collection system and a wastewater treatment plant located in Summersville, Nicholas County, West Virginia. Summersville was issued WV/NPDES Water Pollution Control Permit No. WV0020630 on May 30, 2008.
2. On January 19-20, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted a Compliance Sampling Inspection (CSI) at the Summersville Wastewater Treatment Plant. During the course of this inspection, the following permit violations were observed and documented:
  - a. Samples of the Outlet 007 discharge collected during CSI contained:
    - i. 68 mg/l BOD5 in violation of the maximum daily discharge limitation of 60mg/l BOD5.
    - ii. 5,500 cnts/100ml Fecal Coliform in violation of the maximum daily discharge of 400 cnts/100ml Fecal Coliform.

Promoting a healthy environment.



**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. Summersville 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, Summersville shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Summersville 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  
Compliance Monitoring  
PO Box 662  
Teays, WV 25569**

A copy of this plan shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> 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. Summersville agrees to the following stipulated penalties for each future violation of its permit limits to be paid automatically, without demand to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within ten (10) days of reporting of violations of daily maximum and/or monthly average values on its discharge monitoring reports:

**Violations (BOD, TSS, pH, Ammonia Nitrogen, BOD % Removal, SS % Removal)**

Total # Daily Max Violations	Minor (≤100% exceedence)	Moderate (101-600% exceedence)	Major (>600% exceedence)
1 thru 10	\$1000	\$1500	\$2000
11 thru 20	\$1250	\$1750	\$2250
21 and greater	\$1500	\$2000	\$2500

Total # Monthly Avg Violations	(≤40% exceedence)	(41-300% exceedence)	(>300% exceedence)
1 thru 5	\$2000	\$3000	\$4000
6 thru 10	\$2500	\$3500	\$4500
11 and greater	\$3000	\$4000	\$5000

**Persistent Violations (Fecal Coliform)**

Total # Daily Max Violations	Minor (≤100% exceedence)	Moderate (101-600% exceedence)	Major (>600% exceedence)
1 thru 10	\$2000	\$3000	\$4000
11 thru 20	\$2500	\$3500	\$4500
21 and greater	\$3000	\$4000	\$5000

Total # Monthly Avg Violations	(≤40% exceedence)	(41-300% exceedence)	(>300% exceedence)
1 thru 5	\$4000	\$6000	\$8000
6 thru 10	\$5000	\$7000	\$9000
11 and greater	\$6000	\$8000	\$10,000

Stipulated penalties shall begin immediately upon entry of this Order, and shall continue until Summersville demonstrates that it has achieved compliance with its WV/NPDES permit requirements for four (4) consecutive months on a per parameter basis. Upon achieving full compliance for any of these permit requirements for four (4) consecutive months, Summersville shall provide written notification of its compliance to the Chief Inspector.

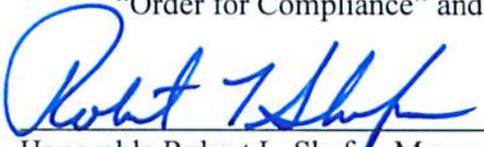
Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. Payment shall be mailed to:

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

### **OTHER PROVISIONS**

1. Summersville 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, Summersville 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, Summersville 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 Summersville 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, Summersville 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 Summersville 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 Summersville 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 Summersville (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 Summersville 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 Summersville 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 Summersville, its successors and assigns.

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



Honorable Robert L. Shafer, Mayor  
City of Summersville

9-7-12

Date

Public Notice begin: \_\_\_\_\_

Date

Public Notice end: \_\_\_\_\_

Date

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

\_\_\_\_\_  
Date

*revised January 2011*

**RECEIVED**

SEP 10 2012

ENVIRONMENTAL  
ENFORCEMENT