



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
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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: Linda Kneece
Coal City Mobile Home Park
PO Box 1167
Oak Hill WV, 25901

DATE: March 27, 2012

ORDER NO.: 7177

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 Linda Woodson/Coal City Mobile Home Park (hereinafter "Woodson").

FINDINGS OF FACT

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

1. Woodson operates a sewage treatment facility located at Coal City, Raleigh County, West Virginia. Woodson was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG550331 on August 30, 2004. The permit has been reissued, with an expiration date of September 23, 2015.
2. On January 6, 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 Woodson's WV/NPDES permit were observed and documented:
 - a. Secondary vegetation growth on dike between ponds and needs to be removed (Section F.1.).
 - b. Duck Weed covered the polishing pond (Section F.1.).
 - c. The stabilization pond has about 25% coverage by duck weed (Section F.1.).

Promoting a healthy environment.

- d. Green algae is sparse in the stabilization pond (Section F.1.).
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 Woodson's WV/NPDES permit were observed and documented:
 - a. Permittee failed to meet the permit effluent parameters for TSS & Ammonia Nitrogen in the first quarter of 2010 & failed to meet the permit effluent parameters for BOD and Ammonia Nitrogen in the second quarter of 2010 (Section A.3.).
 - b. Permittee has the chlorination unit installed at the influent structure for the polishing pond and not at the effluent outlet for the polishing pond (Section F.1.).

As a result of the aforementioned violations, the following warning was issued to Woodson: Immediately, take all actions necessary to insure compliance with the permit effluent limitations.

4. On December 9, 2010, WVDEP personnel conducted a review of the facility's files from the time period of January 2009-September 2010. During this review, forty-three (43) exceedances of Woodson's permit parameters were observed and documented (See Table 1). Each exceedance is a violation of the terms and conditions of Woodson's WV/NPDES permit (Section A.3.).

These exceedances can be further defined as:

- a. Minor violations-12
 - b. Moderate violations-22
 - c. Major violations-9
5. On March 4, 2011, a meeting was held between Woodson and WVDEP personnel to discuss the terms of this Order. Subsequent to this meeting, Woodson submitted financial documents to WVDEP which were used to determine Woodson's economic ability to pay the assessed penalty.
 6. On March 11, 2011, Woodson submitted a plan of interim measures that it would implement to corrective violations at its facility. The interim measures include:
 - a. move the influent pipe to the southeast corner of the lagoon.
 - b. move the effluent pipe to the northwest corner of the lagoon thus using the full volume of the lagoon for treatment.
 - c. remove the separating curtain in the middle of the lagoon to allow for better circulation of aerated waters.
 - d. repositioning the aerator for better efficiency in water movement.
 - e. install as the lagoon effluent line a drain pipe with square corrugations between the lagoon and polishing pond.
 - f. move the polishing pond influent line to the northeast corner.
 - g. move the polishing pond effluent line to the southwest corner of the pond thus using the full volume of the polishing pond for treatment.

- h. replacing the 250/300 gallon chlorine contact tank with a 1000 gallon tank for additional treatment time.
- i. placing a step aeration channel after the de-chlorination for additional aeration.
- j. continue policy of removal of duck weed from both the lagoon and the polishing pond.

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. Woodson 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, Woodson shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Woodson 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
NE 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 Woodson's permit violations, Woodson shall be assessed a civil administrative penalty of one thousand eighty dollars (\$1,080) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

Payment 1 in the amount of \$180 due on or before June 1, 2012.

Payment 2 in the amount of \$180 due on or before July 1, 2012.

Payment 3 in the amount of \$180 due on or before August 1, 2012.

Payment 4 in the amount of \$180 due on or before September 1, 2012.

Payment 5 in the amount of \$180 due on or before October 1, 2012.

Payment 6 in the amount of \$180 due on or before November 1, 2012.

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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. Woodson 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, Woodson 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, Woodson 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 Woodson 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, Woodson 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 Woodson 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 Woodson 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 Woodson (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 Woodson 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 Woodson 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 Woodson, its successors and assigns.
7. This Order shall terminate upon Woodson's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Linda Woodson
Linda Woodson
Coal City Mobile Home Park

4/4/12
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

revised November 2010

RECEIVED

APR - 6 2012

ENVIRONMENTAL
ENFORCEMENT

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Coal City Mobile Home Park Receiving Stream: UT of Soak Creek

Treatment System Design Maximum Flow: 0.0073 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,2b,2c,2d	3b	4a	4b	4c							
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1							
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1							
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1							
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	1							
Average Potential for Harm Factor			1	1	1	1	1	No						
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	1	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		\$5,250
6.2.b.4 - Compliance/noncompliance history	5		\$2,625
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	(\$21,000)
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	(\$5,250)
6.2.b.3 - Cooperation with the Secretary		10	(\$5,250)
6.2.b.5 - Ability to Pay		53	(\$27,825)
Penalty Adjustments			(\$51,420)
Penalty =			\$1,080

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:	



Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000 (304) 353-8180 Fax
www.steptoe-johnson.com

Writer's Contact Information

Armando.Benincasa@steptoe-johnson.com
304-353-8147

April 5, 2012

RECEIVED

APR - 6 2012

HAND DELIVER

Mr. David Simmons
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, WV 25304-2345

ENVIRONMENTAL
ENFORCEMENT

Re: Coal City Mobile Home Park / DEP Enforcement Matter

Dear Mr. Simmons:

Enclosed please find **CONSENT ORDER NUMBER 7177** in reference to the above matter which has been signed by Linda Woodson of the Coal City Mobile Home Park.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Armando Benincasa'.

Armando Benincasa

AFB/dav
Enclosure

cc: Crab Orchard
Linda Kneece

194740.00013

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