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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
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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: Gritts Midway Greenhouse  
Attn: Matthew G. Goff  
Rt. 2, Box 213  
Red House, WV 25168

DATE: August 2, 2012

ORDER NO.: 7554

**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 Gritts Midway Greenhouse (hereinafter "Gritts").

**FINDINGS OF FACT**

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

1. Gritts operates a series of greenhouses, including a hydroponic greenhouse, located in Midway, Putnam County, West Virginia.
2. On December 22, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted a partial inspection of the facility in response to a fish kill investigation. During the inspection, violations of the following sections of WV State Code and WV Legislative Rules were observed and documented:
  - a. 22-11-8-Facility was discharging pollutants from a point source to waters of the State without the authorization pursuant to a WV/NPDES permit. It was observed during this inspection that the facility routinely discharges unused water from the hydroponic process via a sump that collects water from troughs under each hydroponic unit. Several nutrients/fertilizers are added to municipal water, which has not been de-chlorinated, and does not undergo any treatment prior to discharge into State waters.

Promoting a healthy environment.

- b. 47CSR2 Section 8-Discharge from the facility, as a result of a recent cleaning of the hydroponic units, caused a level of 110 µg/l of Total Residual Chlorine in waters of the State, exceeding the Standards for Water Quality limit of 19 µg/l. Facility personnel indicated a yearly cleaning of the hydroponic units was conducted for two days prior to the inspection. Bleach was used during this cleaning and was discharged from the facility via the sump noted above.
- c. 47CSR2 Section 3.2.e.-Discharge from the facility, as a result of the recent cleaning of the hydroponic units, caused materials in concentrations which are harmful, hazardous, or toxic to man, animal, or aquatic life, resulting in a fish kill in the unnamed tributary of Little Buffalo Creek. Discharge from the Gritts facility enters a culvert approximately 20-30 feet upstream of the downstream end of the culvert. The culvert conveys an unnamed tributary to Little Buffalo Creek under the Gritts facility. Numerous dead fish were observed from the downstream end of the culvert to approximately one (1) mile downstream.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. I11-40-045-JCC through I11-40-047-JCC were issued to Gritts.

3. On March 23, 2012, WVDEP and Gritts representatives met to discuss the terms of this Order. Subsequent to the meeting, Gritts provided financial information which was used to determine its ability to pay a civil administrative penalty.
4. On July 18, 2012, Gritts submitted a "Plan of Corrective Action" (POCA) for its facility.

### **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. Gritts shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. The POCA and schedule for compliance has been reviewed by WVDEP and is hereby approved and incorporated into this Order (attached).
3. Because of Gritts' West Virginia Code and Legislative Rule violations, Gritts shall be assessed a civil administrative penalty of eleven thousand seven hundred thirty dollars (\$11,730) 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 \$680 due on or before October 1, 2012.

Payment 2 in the amount of \$650 due on or before November 1, 2012.

Payment 3 in the amount of \$650 due on or before December 1, 2012.

Payment 4 in the amount of \$650 due on or before January 1, 2013.

Payment 5 in the amount of \$650 due on or before February 1, 2013.

Payment 6 in the amount of \$650 due on or before March 1, 2013.

- Payment 7 in the amount of \$650 due on or before April 1, 2013.
- Payment 8 in the amount of \$650 due on or before May 1, 2013.
- Payment 9 in the amount of \$650 due on or before June 1, 2013.
- Payment 10 in the amount of \$650 due on or before July 1, 2013.
- Payment 11 in the amount of \$650 due on or before August 1, 2013.
- Payment 12 in the amount of \$650 due on or before September 1, 2013.
- Payment 13 in the amount of \$650 due on or before October 1, 2013.
- Payment 14 in the amount of \$650 due on or before November 1, 2013.
- Payment 15 in the amount of \$650 due on or before December 1, 2013.
- Payment 16 in the amount of \$650 due on or before January 1, 2014.
- Payment 17 in the amount of \$650 due on or before February 1, 2014.
- Payment 18 in the amount of \$650 due on or before March 1, 2014.

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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

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

  
Matthew G. Goff

Gritts Midway Greenhouse

8/8/12  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date



- Dead fish shown downstream of Gritts.



- Dead fish shown downstream of Gritts.



- Downstream end of culvert under Gritts Property. Discharge into stream is approximately 20-30 ft upstream, into culvert. Dead fish also shown in this photo.



- Stream shown from downstream end of culvert.



- Dead fish shown downstream of Gritts.



- Dead fish shown downstream of Gritts.



- Dead fish shown downstream of Gritts.



- Dead fish shown downstream of Gritts.



- Dead fish shown downstream of Gritts.



- Hydroponic units inside the greenhouse.



- Collection sump that discharges to the stream.

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Gritts Midway Greenhouse

Receiving Stream:

Unnamed Tributary to Little Buffalo Creek

Treatment System Design Maximum Flow:           N/D           MGD

Treatment System Actual Average Flow:           N/D           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									
a)	Amount of Pollutant Released	1 to 3	1	2	2									
b)	Toxicity of Pollutant	0 to 3	0	3	3									
c)	Sensitivity of the Environment	0 to 3	0	1	1									
d)	Length of Time	1 to 3	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	0	3	3									
<b>Average Potential for Harm Factor</b>			0.4	2	2	No								
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>												
	Degree of Non-Compliance	1 to 3	3	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 -			\$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)			\$0
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			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$30</b>
<b>Penalty =</b>			<b>\$11,730</b>

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	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b>	