



---

west virginia department of environmental protection

---

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

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

TO: Hickory View Limited Partnership  
Attn: James Chaplin  
21 Waddles Run Road  
Wheeling, WV 26003

DATE: October 30, 2013  
ORDER NO.: 7963

**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 Hickory View Limited Partnership (hereinafter "Hickory View").

**FINDINGS OF FACT**

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

1. Hickory View is conducting land disturbance activity near Saltwell, Harrison County, West Virginia. Hickory View was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR105986, on May 11, 2012.
2. On November 7, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Hickory View's WV/NPDES permit were observed and documented:
  - a. G.4.e.2.A.i.d.-Hickory View failed to stabilize diversions prior to becoming functional. Specifically, the diversion ditch along the front of the site leading to the sediment basin was not stabilized prior to becoming functional.
  - b. G.4.e.2.A.ii.c.-Hickory View failed to protect the inlet and outlet of the sediment basin against erosion by using appropriate material such as riprap or other similar media.

- c. G.4.e.2.C.v.-Hickory View failed to maintain, on site, tracking procedures of erosion and sediment control inspections that are to be conducted once a week and after a 0.5 inch or greater rain event.
- d. D.1.-Hickory View failed to at all times operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of the permit. Specifically, silt fencing was not maintained throughout the site.
- e. G.4.e.2.A.ii.j.-Hickory View allowed sediment-laden water to leave the site without going through an appropriate device. Specifically, the sediment basin was not functioning as engineered. The baffle was not installed as detailed in the approved Storm Water Pollution Prevention Plan (SWPPP). The riser pipe was not properly installed as detailed in the approved SWPPP, allowing sediment-laden water to flow from the basin uncontrolled.
- f. B.-Hickory View failed to comply with the approved SWPPP. Specifically, the erosion control blanket and the designated concrete washout area were not installed as detailed in the approved SWPPP.
- g. G.4.e.2.C.1.-Hickory View failed to properly dispose of all solid waste and construction/demolition material in accordance with WV State Code and WV Legislative Rule 33CSR1. Construction debris was scattered throughout the site and was being blown into the woodline beyond the project's limits.

As a result of the aforementioned violations, four (4) warnings and Notice of Violation (NOV) Nos. W-NW-TJK-110712-001, W-NW-TJK-110712-002, and W-NW-TJK-110712-003 were issued to Hickory View.

3. On August 29, 2013, WVDEP personnel conducted a partial inspection of the facility in response to a complaint regarding flow received by the sewage treatment plant downslope of the project. Drainage problems were observed behind the apartment buildings. The small drain pipes and plastic drop inlets in the rear of the apartment buildings were full of sediment, receiving excessive amounts of stormwater, and flooding the tenants' properties. Dye testing was conducted in one of the flowing small drain pipes in the rear of the building where a drop inlet had already been removed. In twenty-five (25) minutes, the dye appeared in the sediment basin approximately eighty (80) yards downslope, confirming that sediment deposits in the drainage system have contributed to the drainage issues occurring in the rear of the apartment buildings. Neither James Chaplin, a representative of Hickory View, nor Charles Garvic, the project engineer, were available at the time of the inspection
4. On September 6, 2013, WVDEP personnel conducted a follow-up telephone discussion with Charles Garvic, who confirmed that the drains in the rear of the apartment buildings were not intended or sized to receive all of the clean stormwater runoff from the surrounding area. Charles Garvic stated that the contractor did not install the diversion that should have carried clean stormwater away from the surrounding area; therefore, the clean stormwater was contributing to runoff from the site.
5. On September 12, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Hickory View's WV/NPDES permit were observed and documented:

- a. Appendix IV.2.a -Hickory View failed to report any noncompliance which may have endangered health or the environment immediately after becoming aware of the circumstances by using the Agency's designated alert telephone number. Specifically, the sediment basin's riser pipe structure failed and over topped, allowing the basin to spill its contents, overtaking the sewage treatment plant downslope of the project, and causing a release of sewage to Booths Creek.
- b. G.4.e.2.A.ii.k.-Hickory View used unacceptable Best Management Practices (BMPs). Hay or straw bales were being used as BMPs in an attempt to control stormwater throughout the site.
- c. B.-Hickory View failed to comply with the approved SWPPP. The diversion designed to carry clean stormwater runoff from the surrounding area around and away from the project was not installed as engineered. Excess stormwater overwhelmed storm drains at the rear of the apartment buildings, caused flooding onto tenants' properties, and overwhelmed the sediment basin that was engineered to treat stormwater runoff from the project only. In addition, the baffle system had not been installed as engineered on the approved SWPPP.
- d. G.4.e.2.A.ii.j.-Hickory View allowed sediment-laden water to leave the site without going through an appropriate treatment device. The sediment basin had not been properly maintained. The riser pipe structure failed, allowing the basin to spill its contents, causing damage to the sewage treatment plant downslope in the form of significant sediment deposits. The basin overtopped in an area at a lower elevation than the installed emergency spillway, causing erosion damage on the downslope basin wall that has the potential to lead to catastrophic failure.

As a result of the aforementioned violations, two (2) warnings and NOV Nos. W-NW-TWH-091213-001 and W-NW-TWH-091213-002 were issued to Hickory View.

### **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. Hickory View shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within twenty (20) days of the effective date of this Order, Hickory View shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Hickory View will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0115924, Registration No. WVR105986, and Order No. 7963. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
NW Regional Environmental Enforcement Office  
2031 Pleasant Valley Road  
Fairmont, WV 26554**

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. Because of Hickory View's permit violations, Hickory View shall be assessed a civil administrative penalty of nineteen thousand two hundred seventy dollars (\$19,270) 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. Hickory View 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, Hickory View 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, Hickory View 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 Hickory View 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, Hickory View 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 Hickory View becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Hickory View 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 Hickory View 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 Hickory View (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 Hickory View 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 Hickory View 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 Hickory View, its successors and assigns.
7. This Order shall terminate upon Hickory View's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
James Chaplin  
Hickory View Limited Partnership

11-27-2013  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date



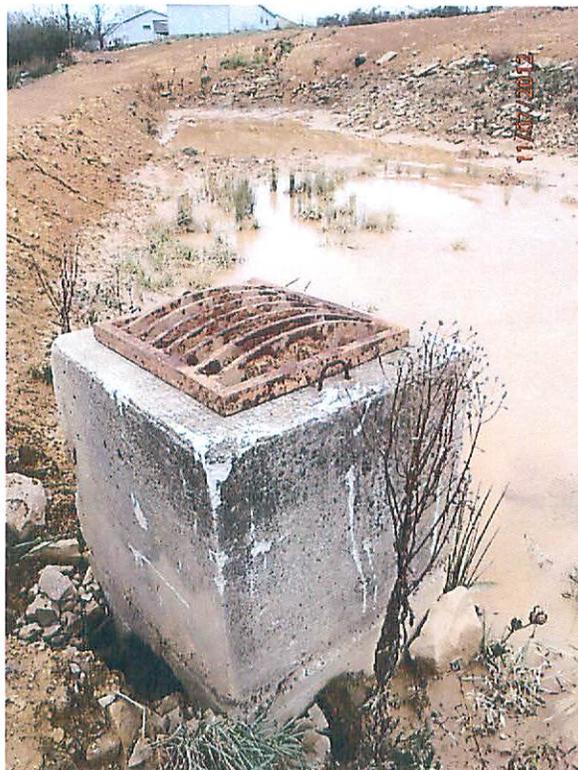
Concrete washing in diversion ditch immediately upslope of sediment basin



Riser pipe structure separated from the outlet pipe allowing sediment-laden water to leave site



Riser pipe structure separated from the outlet pipe allowing sediment-laden water to leave site



Riser pipe structure separated from the outlet pipe allowing sediment-laden water to leave site



No outlet protection



No erosion control blankets or equivalent slope stabilization measures in place



Large areas of bare soil with no stabilization measures, such as seeding and mulching, in place



Construction debris strewn throughout and leaving the site



Large area of bare soil with no stabilization measures in place with erosion occurring



Large area of bare soil with no stabilization measures in place with erosion occurring



Sediment basin holding water during 08/29/2013 site review



Dye deposited in exposed drain at rear of apartments at 0945 during 08/29/2013 site review



Dye detected in sediment basin at 1010 during 08/29/2013 site review



Sediment Basin after having failed and no longer holding water



Hay bales and excessive runoff causing sediment deposits in storm drains



Clean water diversion not in place, storm drains overwhelmed, and flooding of tenants



Clean water diversion not in place, storm drains overwhelmed, and flooding of tenants



Wall of basin eroded as evidence of overtopping and in danger of catastrophic failure



Gravel of emergency spillway clean of sediment and doesn't appear to have been activated



12" pipe designed to drain entire project area obstructed with sediment deposits and vegetation

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:**
Hickory View Apartments
**Receiving Stream:**
Booths Creek
**Treatment System Design Maximum Flow:**   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#														
			2e	2f	5c	5d											
a)	Amount of Pollutant Released	1 to 3	2	1	1	2											
b)	Toxicity of Pollutant	0 to 3	1	1	1	1											
c)	Sensitivity of the Environment	0 to 3	1	1	1	1											
d)	Length of Time	1 to 3	1	1	2	2											
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1											
<b>Average Potential for Harm Factor</b>			1.2	1	1.2	1.4	No										
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>															
	Degree of Non-Compliance	1 to 3	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  $\leq 40\%$  for Avg. Monthly or  $\leq 100\%$  for Daily Max., exceed numeric WQ standard by  $\leq 100\%$ , or report doesn't contain some minor information.

**Moderate** = exceedance of permit limit by  $\geq 41\%$  and  $\leq 300\%$  for Avg. Monthly,  $\geq 101\%$  and  $\leq 600\%$  for Daily Max., exceed numeric WQ standard by  $\geq 101\%$  and  $\leq$  of 600% or report doesn't fully address intended subject matter.

**Major** = exceedance of permit limit by  $\geq 301\%$  for Avg. Monthly,  $\geq 601\%$  for Daily Max., exceed numeric WQ standard by  $\geq 601\%$ , 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 -	30		\$4,440
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>\$4,470</b>
<b>Penalty =</b>			<b>\$19,270</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>	