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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  
Charleston, WV 25304  
Phone: (304) 926-0495  
Fax: (304) 926-0463

Earl Ray Tomblin, Governor  
Randy C. Huffinan, Cabinet Secretary  
www.wvdep.org

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

TO: Hometown Development Company, LLC                      DATE: July 31, 2012  
Jeff Albrecht  
711 2nd Street    ORDER NO.: 6949  
Portsmouth, OH 45662

**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 Hometown Development Company, LLC (hereinafter "Hometown Development Company, LLC").

**FINDINGS OF FACT**

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

1. Hometown Development Company, LLC operates a construction project with land disturbance associated with the construction of CVS Pharmacy located near Romney, in Hampshire County, West Virginia. Hometown Development Company, LLC was issued WV/NPDES Water Pollution Control Permit No. WV00115924, General Permit Registration No. WVR104071 on October 29, 2008.
2. On May 22, 2009, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the project and observed the following deficiencies:
  - a) Permittee has failed to fully implement its approved storm water pollution prevention plan (SWPPP), by not properly installing and maintaining all sediment and erosion control devices. Specifically, silt fence was observed installed on top of the ground, rendering it ineffective as a sediment control device. This is a violation of its WV/NPDES permit (Section G.4.e.2.A.ii).

Promoting a healthy environment.

- b) Sediment laden water has left the site without first going through an appropriate best management practice (BMP) at the WV Rt. 50 intersection and caused Conditions Not Allowable in State Waters, a violation of Legislative Rule, Title 47, Series 2, Section 3.2.a. (47CSR2-3.2.a.).
  - c) Permittee has failed to fully implement the approved SWPPP by not displaying the "Public Notice Sign" as required by its WV/NPDES permit (Section G.4.b.5). Notice of Violation (NOV) No. I09-14-031-MJA was issued.
  - d) Permittee has failed to fully implement the approved SWPPP by not displaying the "Outfall Markers" as required by its WV/NPDES permit (Section C.15). NOV No. I09-14-032-MJA was issued.
3. On June 5, 2009, WVDEP personnel conducted an inspection of the project and observed the following deficiencies:
- a) Permittee has failed to fully implement the approved SWPPP by not properly installing and maintaining all sediment and erosion control devices. Specifically, silt fence was observed installed on top of the ground, rendering it ineffective as a sediment control device. This is a violation of its WV/NPDES permit (Section G.4.e.2.A.ii).
  - b) A diversion was placed to dewater the site and bypass all available BMPs causing Conditions Not Allowable in State Waters. This is a violation of its WV/NPDES permit (Section G.4.e.2.A.ii.j) as well as 47CSR2-3.2.a. NOV No. I09-14-034-MJA was issued.
  - c) Permittee has failed to fully implement the approved SWPPP by not displaying the "Public Notice Sign" as required by its WV/NPDES permit (Section G.4.b.5). NOV No. I09-14-035-MJA was issued.
4. On June 10, 2009 WVDEP personnel conducted an inspection of the project and observed the following deficiencies:
- a) Sediment laden water has left the site without first going through an appropriate BMP at the WV Rt 50 intersection resulting in a highly visible plume in Grassy Lick Run. This is a violation of 47CSR2-3.2.a. NOV No. I09-14-043-216 was issued.
5. On June 22, 2009 WVDEP personnel conducted an inspection of the project and observed the following deficiencies:
- a) Sediment laden water has left the site without first going through an appropriate BMP at the WV Rt. 50 intersection resulting in a highly visible plume in Grassy Lick Run. This is a violation of 47CSR2-3.2.a. NOVs No. I09-14-044-216 and I09-14-045-216 were issued.
6. On July 14, 2009 WVDEP personnel conducted an inspection of the project and observed the following deficiencies:
- a) Permittee has failed to fully implement its approved SWPPP by not taking appropriate measures to control dust leaving the jobsite. This is a violation of its WV/NPDES permit (Section G.4.e.2.C.ii). NOV No. I09-14-044-MJA was issued.

- b) Permittee has failed to fully implement its approved SWPPP by not properly installing and maintaining all sediment and erosion control devices. Specifically, silt fence was observed along Route 50 installed on top of the ground, rendering it ineffective as a sediment control device. This is a violation of its WV/NPDES permit (Section G.4.e.2.A.ii). NOV No. I09-14-43-MJA was issued.
  - c) Permittee has failed to fully implement the approved SWPPP by not displaying the “Outfall Markers” as required by its WV/NPDES permit (Section C.15). NOV No. I09-14-042-MJA was issued.
  - d) Sediment laden water has left the site without first going through an appropriate BMP at the drop basin near the WV Rt. 50 intersection and caused Conditions Not Allowable in State Waters, a violation of 47CSR2-3.2.a. NOV No. I09-14-045-MJA was issued.
7. On July 16, 2009 WVDEP personnel conducted an inspection of the project and observed the following deficiencies:
- a) Permittee has failed to fully implement the approved SWPPP by not properly installing and maintaining all sediment and erosion control devices. Specifically, silt fence was observed along East side of project installed on top of the ground, rendering it ineffective as a sediment control device. This is a violation of its WV/NPDES permit (Section G.4.e.2.A.ii). NOV No. I09-14-048-MJA was issued.
8. On September 23, 2009 WVDEP personnel conducted an inspection of the project and observed the following deficiencies:
- a) Permittee has failed to fully implement the approved SWPPP by not properly installing and maintaining all sediment and erosion control devices. Specifically, silt fence was observed along the East side of project installed on top of the ground, rendering it ineffective as a sediment control device. This is a violation of its WV/NPDES permit (Section G.4.e.2.A.ii). NOV No. I09-14-063-MJA was issued.
9. On March 26, 2012, WVDEP and Hometown Development Company, LLC met to discuss the terms of this Order. It was agreed that the site is now in compliance and construction has ceased, therefore no corrective action plan will be required by this Order.
10. On June 6, 2012, Hometown Development Company, LLC submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Hometown Development Company LLC’s ability to pay a civil administrative penalty

### **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. Hometown Development Company, LLC shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Because of Hometown Development Company, LLC's Legislative Rule and permit violations, Hometown Development Company, LLC shall be assessed a civil administrative penalty of fifteen thousand dollars (\$15,000) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. 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  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. Hometown Development Company, LLC 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, Hometown Development Company, LLC 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, Hometown Development Company, LLC 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 Hometown Development Company, LLC 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, Hometown Development Company, LLC 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 Hometown Development Company, LLC 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 Hometown Development Company, LLC 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

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

  
\_\_\_\_\_  
Jeff Albrecht  
Hometown Development Company, LLC

August 6, 2012  
\_\_\_\_\_  
Date

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

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

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

\_\_\_\_\_  
Date











## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Hometown Development Company, LLC Receiving Stream: Grassy Lick Run

Treatment System Design Maximum Flow: N/A MGD

Treatment System Actual Average Flow: N/A 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	3a	3b	3c	4a	5a	6a	6b	6c	6d
a)	Amount of Pollutant Released	1 to 3	1	3	1	1	1	3	1	2	2	1	1	1	1
b)	Toxicity of Pollutant	0 to 3	1	1	0	0	1	1	0	1	1	1	1	0	1
c)	Sensitivity of the Environment	0 to 3	1	1	0	0	1	1	0	1	1	1	1	0	1
d)	Length of Time	1 to 3	1	1	1	1	2	1	2	1	1	1	2	2	1
e)	Actual Exposure and Effects thereon	0 to 3	1	2	0	0	1	2	0	1	2	1	1	0	1
Average Potential for Harm Factor			1	1.6	0.4	0.4	1.2	1.6	0.6	1.2	1.4	1	1.2	0.6	1
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	1	2	1	1	2	2	1	2	2	1	2	1	2

### 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.



		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
2a	Minor	Minor	\$1,000	1	\$1,000
2b	Moderate	Moderate	\$3,600	1	\$3,600
2c	Minor	Minor	\$400	1	\$400
2d	Minor	Minor	\$400	1	\$400
3a	Moderate	Moderate	\$3,200	1	\$3,200
3b	Moderate	Moderate	\$3,600	1	\$3,600
3c	Minor	Minor	\$600	1	\$600
4a	Moderate	Moderate	\$3,200	1	\$3,200
5a	Moderate	Moderate	\$3,400	1	\$3,400
6a	Minor	Minor	\$1,000	1	\$1,000
6b	Moderate	Moderate	\$3,200	1	\$3,200
6c	Minor	Minor	\$600	1	\$600
6d	Minor	Moderate	\$1,500	1	\$1,500
7a	Moderate	Major	\$4,200	1	\$4,200
8a	Moderate	Major	\$4,400	1	\$4,400
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
<b>Total Base Penalty</b>					<b>\$34,300</b>

## 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		\$3,430
6.2.b.4 - Compliance/noncompliance history	20		\$6,860
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		10	(\$3,430)
6.2.b.5 - Ability to Pay		76.355	(\$26,190)
<b>Penalty Adjustments</b>			<b>(\$19,300)</b>
<b>Penalty =</b>			<b>\$15,000</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> None determined.	



RECEIVED

AUG - 8 2012

west virginia department of environmental protection

ENVIRONMENTAL  
ENFORCEMENT

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

July 31, 2012

Hometown Development Company, LLC  
Jeff Albrecht  
711 2nd Street  
Portsmouth, OH 45662

CERTIFIED RETURN RECEIPT REQUESTED

91 7199 9991 7031 5497 1027

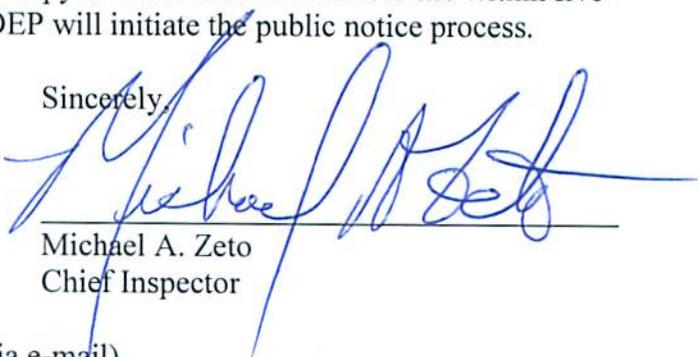
RE: Violation of Chapter 22, Article 11  
of the WV State Code

Dear Mr. Albrecht:

Enclosed is 2<sup>nd</sup> revised CONSENT ORDER NUMBER 6949 dated July 31, 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 Hometown Development Company, LLC violating Chapter 22, Article 11 of the WV State Code at its facility located in Romney, Hampshire County, West Virginia. This revision is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer, and your submittal of financial documents, which were used to evaluate your ability to pay a civil administrative penalty. 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: 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)  
Robin C. Dolly, Environmental Inspector Supervisor, EE/WW (via e-mail)  
Rhod Mills, Environmental Inspector, EE/WW (via e-mail)  
Matthew Alt, Environmental Inspector, EE/WW (via e-mail)  
Shyrel Moellendick, MSSS, EE (via e-mail)

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