



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: Judy Lynn Mobile Home Park
Attn: Eric Gantt
24 Blessing Lane
Martinsburg, WV 25403

DATE: March 21, 2014

ORDER NO.: 8038

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 Judy Lynn Mobile Home Park (hereinafter "JLMHP").

FINDINGS OF FACT

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

1. JLMHP operates a mobile home park and associated land disturbance located near Martinsburg, in Berkeley County, West Virginia.
2. On January 13, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and WV Legislative Rules were observed and documented:
 - a. 22-11-8 and 47CSR10 Section 3.1 – JLMHP was operating an ongoing land disturbance of approximately two (2) acres without authorization pursuant to a WV/NPDES permit.

As a result of the aforementioned violations, Notice of Violation (NOV) No. I14-02-004-MJA was issued to JLMHP.

3. On January 23, 2014, JLMHP submitted an application for the required WV/NPDES permit. Upon review, WVDEP personnel determined the application to be administratively incomplete due to an error regarding the Facility and Responsible Party names.
4. On March 18, 2014, WVDEP personnel and representatives of JLMHP met to discuss the terms and conditions of this Order. During the meeting, JLMHP represented that it was in the process of correcting the aforementioned WV/NPDES permit application error.

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. JLMHP shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within twenty-one (21) days of the effective date of this Order, JLMHP shall electronically submit an administratively complete application for WV/NPDES permit coverage for the regulated activity. Any questions regarding the application process shall be directed to WVDEP DWWM-Permitting Section at (304) 926-0495.
3. Because of JLMHP's West Virginia Code and Legislative Rule violations, JLMHP shall be assessed a civil administrative penalty of one thousand six hundred thirty dollars (\$1,630) 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 \$271.66 due on or before June 1, 2014.

Payment 2 in the amount of \$271.66 due on or before July 1, 2014.

Payment 3 in the amount of \$271.66 due on or before August 1, 2014.

Payment 4 in the amount of \$271.66 due on or before September 1, 2014.

Payment 5 in the amount of \$271.66 due on or before October 1, 2014.

Payment 6 in the amount of \$271.70 due on or before November 1, 2014.

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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. JLMHP 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, JLMHP 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, JLMHP 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 JLMHP 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, JLMHP 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 JLMHP becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and JLMHP 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 JLMHP 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 JLMHP (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 JLMHP 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 JLMHP 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 JLMHP, its successors and assigns.

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

Eric Gantt

Eric Gantt
Judy Lynn Mobile Home Park

4-1-14

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date



1/13/2014 – No perimeter controls or trapping features.



1/13/2014 – Approximately two acre disturbance with no permit.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Judy Lynn Mobile Home Park **Receiving Stream:** UT to the Opequon

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#											
			2a											
a)	Amount of Pollutant Released	1 to 3	1											
b)	Toxicity of Pollutant	0 to 3	1											
c)	Sensitivity of the Environment	0 to 3	1											
d)	Length of Time	1 to 3	1											
e)	Actual Exposure and Effects thereon	0 to 3	1											
Average Potential for Harm Factor			1	No										
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 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		10	(\$200)
6.2.b.3 - Cooperation with the Secretary		10	(\$200)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$370)
Penalty =			\$1,630

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:	