



west virginia department of environmental protection

Environmental Enforcement
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0470 Fax: (304) 926-0488

Earl Ray Tomblin, Governor
Randy C. Huffinan, Cabinet Secretary
www.dep.wv.gov

March 6, 2014

Mayford G. Witt
Witt Environmental
2511-J Smith Rd.
Charleston, WV 25314

CERTIFIED RETURN RECEIPT REQUESTED
91 7199 9991 7033 2801 6424
RE: Violation of Chapter 22, Article 11
of the WV State Code

Dear Mr. Witt:

Enclosed is revised CONSENT ORDER NUMBER 7993 dated March 6, 2014. 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 Mayford G. Witt violating Chapter 22, Article 11 of the WV State Code at its facility located in Barboursville, Cabell 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,


Jeremy Bandy
Assistant Chief Inspector

Enclosure

cc: Scott G. Mandirola, Director, DWWM (via e-mail)
Yogesh Patel, Asst. Director, DWWM/Permits (via e-mail)
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
Laura McGee, Environmental Resources Specialist, EE (via e-mail)
Cynthia Musser, Environmental Inspector Supervisor, EE/WW (via e-mail)
Eric J. Philyaw, Environmental Inspector Specialist, EE/WW (via e-mail)
Ryan Harbison, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)

Promoting a healthy environment.



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

TO: Mayford G. Witt
Witt Environmental
2511-J Smith Rd
Charleston, WV 25314

DATE: March 6, 2014

ORDER NO.: 7993

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 Mayford G. Witt.

FINDINGS OF FACT

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

1. Mayford G. Witt operates a wastewater treatment facility serving Woodland Heights Subdivision located in Barboursville, Cabell County, West Virginia. Mayford G. Witt was issued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550464, on July 21, 2008. The permit was reissued on November 18, 2011.
2. On March 25, 2013, 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 Mayford G. Witt's WV/NPDES permit were observed and documented:
 - a. Section F.1-The permittee failed to properly operate and maintain the facility. Specifically, the following deficiencies were observed:
 - i. One side of the barscreen had rusted away.
 - ii. The sludge holding tank had excessive buildup and no air supply.
 - iii. Solids were observed leaving the clarifier and being deposited on the surface sand filters.
 - iv. The clarifier skimmer was not properly adjusted.

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- v. Surface sand filters were covered with vegetation, except in areas with sludge deposits. The sand filter nearest the plant appeared to be short circuiting.
 - vi. The air line to the post air chamber was not operating.
 - vii. The distribution box was not alternating flow to the sand filters as designed.
- b. Section E.13-The permittee failed to post a permanent marker at the establishment in accordance with WV Legislative Rule 47CSR11 Section 9.
 - c. Section B.1-The permittee failed to submit 2011 and 2012 Discharge Monitoring Reports (DMRs) within twenty (20) days following the end of the reporting period.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W13-06-002-EJP, W13-06-003-EJP, and W13-06-004-EJP were issued to Mayford G. Witt.

- 3. On October 17, 2013, WVDEP personnel conducted a record review and determined that DMRs had not been submitted for the 1st, 2nd, and 3rd quarters of 2013.
- 4. On January 21, 2014, WVDEP personnel and Mayford G. Witt met to discuss the terms and conditions of this Order. During the meeting, Mayford G. Witt submitted 1st Quarter 2011-4th Quarter 2013 DMRs to WVDEP personnel. Upon review, WVDEP personnel observed and documented the following violations of Mayford G. Witt's WV/NPDES permit:
 - a. Section B-The permittee failed to submit 4th quarter 2011 DMRs. In addition, the permittee failed to report Total Residual Chlorine values for 1st, 3rd, and 4th quarters of 2013, and Dissolved Oxygen values were not reported on any DMRs.
 - b. Section A-Eleven (11) exceedances of Mayford G. Witt's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-One (1)
 - ii. Moderate violations-Three (3)
 - iii. Major violations-Seven (7)
- 5. On February 7, 2014, Mayford G. Witt submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Mayford G. Witt'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. Mayford G. Witt 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, Mayford G. Witt shall submit for approval a proposed plan of corrective action and schedule, outlining action items and

completion dates for how and when Mayford G. Witt 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. WV0103110, Registration No. WVG550464, and Order No. 7993. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

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 Mayford G. Witt's permit violations, Mayford G. Witt shall be assessed a civil administrative penalty of one thousand two hundred dollars (\$1,200) 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 \$100 due on or before May 1, 2014.
Payment 2 in the amount of \$100 due on or before June 1, 2014.
Payment 3 in the amount of \$100 due on or before July 1, 2014.
Payment 4 in the amount of \$100 due on or before August 1, 2014.
Payment 5 in the amount of \$100 due on or before September 1, 2014.
Payment 6 in the amount of \$100 due on or before October 1, 2014.
Payment 7 in the amount of \$100 due on or before November 1, 2014.
Payment 8 in the amount of \$100 due on or before December 1, 2014.
Payment 9 in the amount of \$100 due on or before January 1, 2015.
Payment 10 in the amount of \$100 due on or before February 1, 2015.
Payment 11 in the amount of \$100 due on or before March 1, 2015.
Payment 12 in the amount of \$100 due on or before April 1, 2015.

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. Mayford G. Witt 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, Mayford G. Witt 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, Mayford G. Witt 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 Mayford G. Witt 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, Mayford G. Witt 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 Mayford G. Witt becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Mayford G. Witt 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 Mayford G. Witt 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 Mayford G. Witt (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 Mayford G. Witt 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 Mayford G. Witt 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 Mayford G. Witt, its successors and assigns.**

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

Mayford G. Witt
Mayford G. Witt
Witt Environmental

3-16-14
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

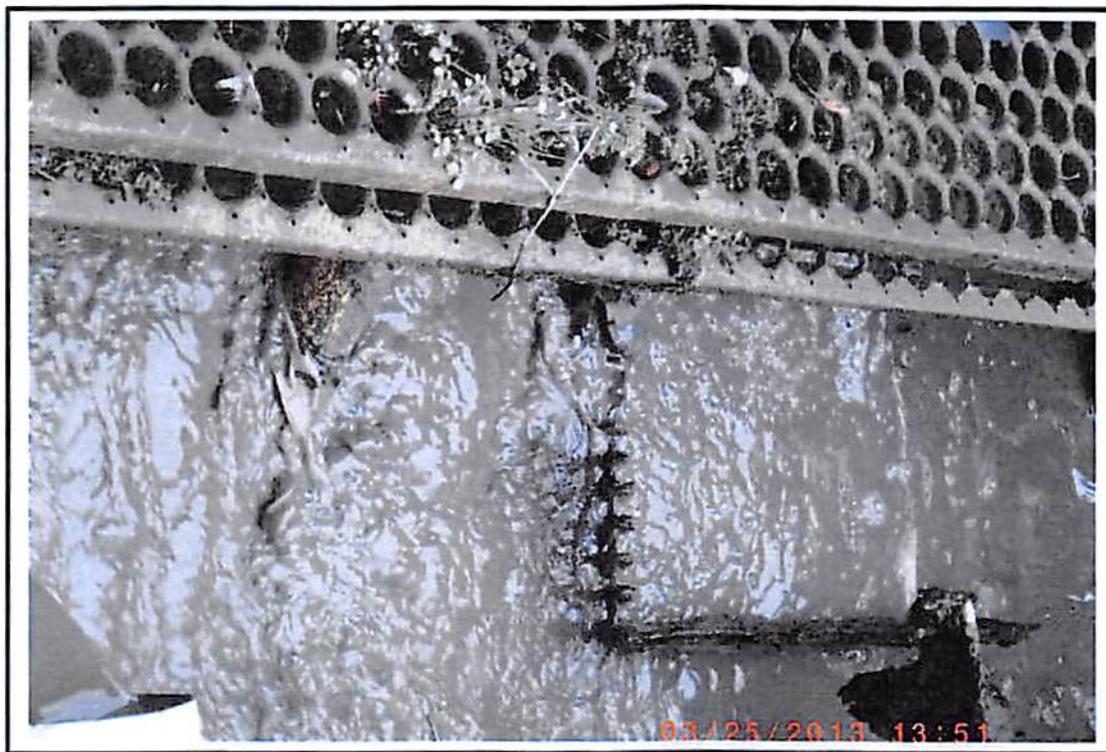
Table One: Mayford G. Witt DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 1st Quarter 2011 - 4th Quarter 2013						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
3rd Qtr 12	BOD, 5-Day, 20 Deg. C	mg/L	5	9.1	82%	-	X	-
3rd Qtr 12	Fecal Coliform	counts/100ml	200	6000	2900%	-	-	X
4th Qtr 13	Fecal Coliform	counts/100ml	200	613	207%	-	X	-
1st Qtr 11	Total Residual Chlorine	ug/l.	28	740	2543%	-	-	X
2nd Qtr 11	Total Residual Chlorine	ug/l.	28	1930	6793%	-	-	X
3rd Qtr 11	Total Residual Chlorine	ug/l.	28	330	1079%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - 1st Quarter 2011 - 4th Quarter 2013						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
3rd Qtr 12	Fecal Coliform	counts/100ml	400	6000	1400%	-	-	X
4th Qtr 13	Fecal Coliform	counts/100ml	400	613	53%	X	-	-
1st Qtr 11	Total Residual Chlorine	ug/l.	57	740	1198%	-	-	X
2nd Qtr 11	Total Residual Chlorine	ug/l.	57	1930	3286%	-	-	X
3rd Qtr 11	Total Residual Chlorine	ug/l.	57	330	479%	-	X	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	1	3	7

Woodland Heights Subdivision
WVG550464
Recon Inspection 3/25/13



3/25/2013 – One side of the bar screen had rusted away.

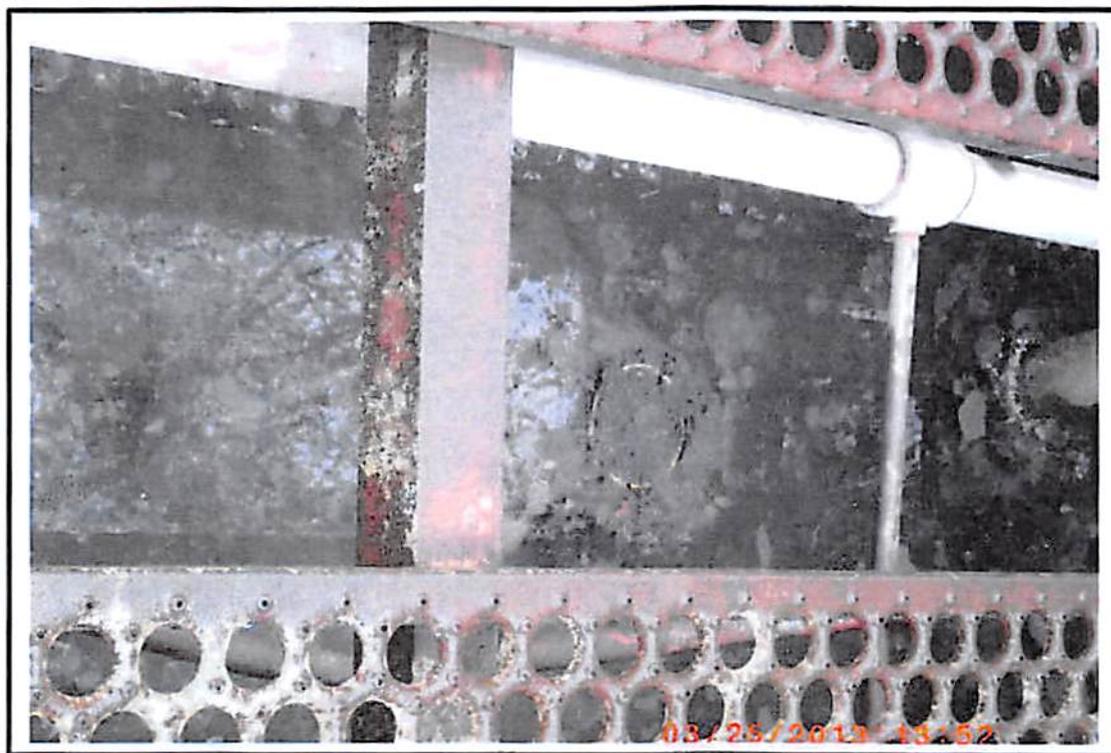


3/25/2013 – Sludge holding tank had excessive buildup of sludge and no air supply.

Woodland Heights Subdivision,
WVG550464
Recon Inspection 3/25/13



3/25/2013 – Solids were observed leaving the clarifier.



3/25/2013 – Clarifier skimmer was not properly adjusted.

Woodland Heights Subdivision,
WVG550464
Recon Inspection 3/25/13



3/25/2013 – Surface sand filters were covered with vegetation except in areas with sludge deposits.



3/25/2013 – Distribution box was not alternating flow to the sand filters as designed.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Mayford G. Witt Receiving Stream: Unnamed tributary of Mud River

Treatment System Design Maximum Flow: 0.02 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	3										
a)	Amount of Pollutant Released	1 to 3	1	1	1	1										
b)	Toxicity of Pollutant	0 to 3	1	0	0	0										
c)	Sensitivity of the Environment	0 to 3	1	0	0	0										
d)	Length of Time	1 to 3	1	1	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0	0										
Average Potential for Harm Factor			0.8	0.4	0.4	0.4	No									
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	3	1	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 -	10		\$1,590
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	(\$1,590)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,590)
6.2.b.5 - Ability to Pay		82.64	(\$13,140)
Penalty Adjustments			(\$14,700)
Penalty =			\$1,200

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:	