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west virginia department of environmental protection

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Division of Water and Waste Management  
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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

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

TO: OV Smith & Sons  
George Smith  
P.O. Box 12150  
Charleston, WV 25302

DATE: December 29, 2014

ORDER NO.: 8194

**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 OV Smith & Sons (hereinafter "OV Smith & Sons").

**FINDINGS OF FACT**

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

1. OV Smith & Sons operates a sewage treatment facility located in Chapmanville, Logan County, West Virginia. OV Smith & Sons was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550321, on March 29, 2011.
2. On April 10, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, it was observed and documented that the aeration basin contained floating sludge, the de-chlorination chemical feeder had rocks in the bottom of the pipe which limited contact with the discharge, the wastewater in the chlorine contact chamber was cloudy, and requested records were unavailable. A review of Discharge Monitoring Reports (DMRs) was conducted, and exceedances of OV Smith and Sons' WV/NPDES permit parameters during the 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2012 and the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> quarters of 2013 were observed and documented. In addition, it was documented that OV Smith and Sons failed to report the results of pollutant monitoring on the 2<sup>nd</sup> quarter 2013 DMR.

As a result of the aforementioned DMR related violations, Notice of Violation (NOV) Nos. W14-23-25-CJN and W14-23-26-CJN were issued to OV Smith and Sons.

Promoting a healthy environment.

3. On December 4, 2014, WVDEP personnel and representatives of OV Smith and Sons met to discuss the terms and conditions of this Order.
4. On December 26, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted a review of facility records from the time period of the 1<sup>st</sup> Quarter of 2012 through the 3<sup>rd</sup> Quarter of 2014. During this review, the following violations of the terms and conditions of OV Smith & Sons' WV/NPDES permit were observed:
  - a. Section A.1 – Twenty-four (24) exceedances of OV Smith & Sons' permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
    - i. Minor violations-ten (10)
    - ii. Moderate violations-seven (7)
    - iii. Major violations-seven (7)

As a result of the aforementioned violations, Notice of Violation (NOV) No. W14-23-080-CJN was issued to OV Smith & Sons.

### **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. OV Smith & Sons shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of the effective date of this Order, OV Smith & Sons shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when OV Smith & Sons 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. WVG0103110, Registration No. WVG550321, and Order No. 8194. 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 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 OV Smith & Sons' permit violations, OV Smith & Sons shall be assessed a civil administrative penalty of six thousand eight hundred thirty dollars (\$6,830) 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:**

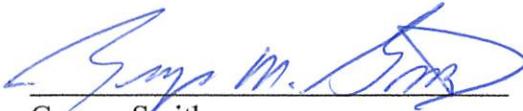
**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

#### **OTHER PROVISIONS**

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

  
George Smith  
OV Smith & Sons

1/6/15  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

*revised March 2013*

**RECEIVED**

JAN 07 2015

ENVIRONMENTAL  
ENFORCEMENT



4/10/2014 – Floating sludge in aeration basin.



4/10/2014 – Cloudy chlorine contact chamber.



4/10/2014 – Rocks in bottom of dechlor tube. \*Time on photo is one hour behind.

Table One:  
OV Smith and Sons DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 1st Quarter 2012 through 3rd Quarter 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
						-	-	-
Mar. 2012	Flow, in conduit	mgd	0.0015	0.0029	93%	-	X	-
June 2012	Fecal Coliform	cnts/100ml	200	6000	2900%	-	-	X
Mar. 2013	BOD	mg/l	30	140	367%	-	-	X
Mar. 2013	TSS	mg/l	30	140	367%	-	-	X
June 2013	BOD	mg/l	30	33	10%	X	-	-
June 2013	TSS	mg/l	30	36	20%	X	-	-
June 2013	Fecal Coliform	cnts/100ml	200	383	92%	-	X	-
Dec 2013	BOD	mg/l	30	72	140%	-	X	-
June 2014	BOD	mg/l	30	36.5	22%	X	-	-
Sept 2014	BOD	mg/l	30	65	117%	-	X	-
Sept 2014	Fecal Coliform	cnts/100ml	200	570	185%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY - 1st Quarter 2012 through 3rd Quarter 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
						-	-	-
June 2012	Fecal Coliform	cnts/100ml	400	6000	1400%	-	-	X
Mar. 2013	BOD	mg/l	60	140	133%	-	X	-
Mar. 2013	TSS	mg/l	60	140	133%	-	X	-
June 2013	Fecal Coliform	cnts/100ml	400	14700	3575%	-	-	X
Dec 2013	BOD	mg/l	60	110	83%	X	-	-
Sept 2014	BOD	mg/l	60	65	8%	X	-	-
Sept 2014	Fecal Coliform	cnts/100ml	400	570	43%	X	-	-

Outlet 001 DMR Exceedances - INSTANTANEOUS. MAX. - 1st Quarter 2012 through 3rd Quarter 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
						-	-	-
June 2012	Fecal Coliform	cnts/100ml	500	6000	1100%	-	-	X
Mar. 2013	BOD	mg/l	75	140	87%	X	-	-
Mar. 2013	TSS	mg/l	75	140	87%	X	-	-
June 2013	Fecal Coliform	cnts/100ml	500	14700	2840%	-	-	X
Dec 2013	BOD	mg/l	75	110	47%	X	-	-

Outlet 001 DMR Exceedances - pH MAX. DAILY (Min.) - 1st Quarter 2012 through 3rd Quarter 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
						-	-	-
June 2013	pH	S.U.	6.0	5.85	20.0%	X	-	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	10	7	7

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: OV Smith and Sons Receiving Stream: \_\_\_\_\_

Treatment System Design Maximum Flow: 0.0015 MGD

Treatment System Actual Average Flow: 0.0015 MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			4ai	4aii	4aiii									
a)	Amount of Pollutant Released	1 to 3	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	1	1									
c)	Sensitivity of the Environment	0 to 3	1	1	1									
d)	Length of Time	1 to 3	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1									
<b>Average Potential for Harm Factor</b>			1	1	1	No								
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>												
	Degree of Non-Compliance	1 to 3	1	2	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		\$1,700
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)		50	(\$8,500)
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	(\$1,700)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,700)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>(\$10,170)</b>
<b>Penalty =</b>			<b>\$6,830</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>	