



west virginia department of environmental protection

Division of Water and Waste Management
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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: Pleasant View PSD
Kenny Pennington, Chairman
PO Box 295
Branchland, WV 25506

DATE: January 7, 2014

ORDER NO.: 7958

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 Pleasant View PSD (hereinafter "Pleasant View").

FINDINGS OF FACT

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

1. Pleasant View operates a wastewater collection system and treatment lagoons located in Lincoln County, West Virginia. Pleasant View was reissued WV/NPDES Water Pollution Control Permit No. WV0027642 on October 26, 2007 and October 15, 2012.
2. On July 19, 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 Pleasant View's WV/NPDES permit were observed and documented:
 - a. Appendix A.II.-Pleasant View failed to properly operate and maintain all facilities. Specifically, Pleasant View failed to operate and maintain both pumps in lift station No. Three (3), the dike along the edge of the stabilization pond, and the disinfection system.
 - b. Section C-Pleasant View failed to conduct or maintain records of the core sampling of the sludge blankets in the stabilization pond.

Promoting a healthy environment.

- c. Section C-Pleasant View failed to implement a program to identify and eliminate sources of inflow and infiltration in the system and failed to submit semi-annual progress reports of work done under this program.
- d. Section A-Pleasant View failed to install a flow measurement device capable of continuous measured flow.

As a result of the aforementioned violations, Notices of Violation (NOV) Nos. W13-22-140-BMW, W13-22-141-BMW, and W13-22-142-BMW were issued to Pleasant View.

3. On November 7, 2013, WVDEP personnel and representatives of Pleasant View met to discuss the terms and conditions of this Order. During the meeting, Pleasant View submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Pleasant View's ability to pay a civil administrative penalty.
4. On November 14, 2013, WVDEP personnel conducted a review of facility records from the time period of August 2011 through July 2013. During this review, the following violations of the terms and conditions of Pleasant View's WV/NPDES permit were observed:
 - a. Section A-Forty-two (42) exceedances of Pleasant View's permit parameters were documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-fifteen (15)
 - ii. Moderate violations-thirteen (13)
 - iii. Major violations-fourteen (14)
 - b. Section A-Pleasant View failed to monitor the following parameters in September 2011, December 2011, March 2012, and June 2012: Total Nitrogen, Total Phosphorus, Total Recoverable Copper, and Total Recoverable Lead.

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. Pleasant View 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, Pleasant View shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Pleasant 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. WV0027642 and Order No. 7958. 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 Pleasant View's permit violations, Pleasant View shall be assessed a civil administrative penalty of seven thousand nine hundred thirty dollars (\$7,930) 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 \$2,643.33 due on or before March 1, 2014.

Payment 2 in the amount of \$2,643.33 due on or before April 1, 2014.

Payment 3 in the amount of \$2,643.34 due on or before May 1, 2014.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

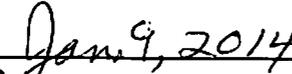
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Pleasant 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, Pleasant 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, Pleasant 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 Pleasant 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, Pleasant 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 Pleasant View 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 Pleasant 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 Pleasant 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 Pleasant 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 Pleasant 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 Pleasant View, its successors and assigns.

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


Kenny Pennington, Chairman
Pleasant View PSD


Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

Photograph Attachment



Stabilization pond



Effluent weir from stabilization pond

Photograph Attachment



Duckweed on stabilization pond



Influent line to stabilization pond

Photograph Attachment



Holes in dike of stabilization pond



Duckweed cover on polishing pond

Photograph Attachment



Kudzu growth around disinfection system



Uncovered chlorine feed unit

Photograph Attachment



Broken discharge line from chlorine contact chamber



Open and cracked dechlorination feeder

Photograph Attachment



Lift station #1



Outlet Marker for unpermitted SSO at lift station #1

Photograph Attachment



Wet well at lift station #1



Wet well at lift station #2

Photograph Attachment



Lift station #3 with ground subsiding over line in the foreground



Bypass at lift station #4

Photograph Attachment



Wet well at lift station #4



Staley's Branch below discharge point

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Pleasant View PSD

Receiving Stream:

Staley Branch of Guyandotte

Treatment System Design Maximum Flow: 0.036 MGD

Treatment System Actual Average Flow: N/D 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	4ai	4aii	4aiii						
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1						
b)	Toxicity of Pollutant	0 to 3	1	0	0	0	1	1	1						
c)	Sensitivity of the Environment	0 to 3	1	0	0	0	1	1	1						
d)	Length of Time	1 to 3	1	1	1	1	1	1	1						
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0	0	1	1	1						
Average Potential for Harm Factor			0.8	0.4	0.4	0.4	1	1	1	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	1	1	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.

		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	Major	\$1,900	1	\$1,900
2b	Minor	Minor	\$400	1	\$400
2c	Minor	Minor	\$400	1	\$400
2d	Minor	Major	\$1,700	1	\$1,700
4ai	Minor	Minor	\$1,000	15	\$15,000
4aii	Minor	Moderate	\$1,500	12	\$18,000
4aiii	Minor	Major	\$2,000	14	\$28,000
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
0	FALSE	FALSE	FALSE		\$0
Total Base Penalty					\$65,400

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)		10	(\$6,540)
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	(\$6,540)
6.2.b.5 - Ability to Pay		67.92	(\$44,420)
Penalty Adjustments			(\$57,470)
Penalty =			\$7,930

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:	