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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: Springer Run Park LLC  
Carey W. Brincefield  
PO Box 337  
Ashton, MD 20851

DATE: June 23, 2016

ORDER NO.: 8568

**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 Springer Run Park LLC (hereinafter “Springer Run”).

**FINDINGS OF FACT**

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

1. Springer Run operates a sewage collection system located near Hedgesville, Berkeley County, West Virginia. Springer Run was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG551048, on November 21, 2011. The WV/NPDES permit was administratively extended until March 31, 2016.
2. On December 29, 2015, 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 Springer Run’s WV/NPDES permit were observed and documented:
  - a. Section B.1-Springer Run failed to submit quarterly discharge monitoring reports within twenty (20) days after the reporting periods.

As a result of the aforementioned violations, Notice of Violation (NOV) No. w15-02-GRC-81 was issued to Springer Run.

3. On March 7, 2016, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Springer Run's WV/NPDES permit were observed and documented:

- a. Section B.1-Springer Run failed to submit quarterly discharge monitoring reports within twenty (20) days after the reporting periods.

As a result of the aforementioned violations, NOV No. w16-02-018-mkk was issued to Springer Run.

4. On April 21, 2016, WVDEP personnel conducted a record review from the 2<sup>nd</sup> Quarter of 2014 through the 1<sup>st</sup> Quarter of 2016. During the review, violations of the following sections of the terms and conditions of Springer Run's WV/NPDES permit were observed and documented:

- a. Section B.3 – Springer Run failed to submit the following quarterly discharge monitoring reports within twenty (20) days after the reporting period: the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Quarters of 2014 and the 1<sup>st</sup> and 2<sup>nd</sup> Quarters of 2015. The aforementioned discharge monitoring reports were submitted late.
- b. Section A – Two (2) exceedances were documented during the 1<sup>st</sup> quarter of 2015 (Table 1).
  - i. One (1) minor
  - ii. One (1) moderate

5. On June 17, 2016, WVDEP personnel received a response to this Order which outlined the circumstances surrounding these violations.

### **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. Springer Run shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, Springer Run shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Springer Run will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0103110, Registration No. WVG551048, and Order No. 8568. The plan of corrective action 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 Springer Run's permit violations, Springer Run shall be assessed a civil administrative penalty of two thousand seven hundred thirty dollars (\$2,730) 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. Springer Run 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, Springer Run 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, Springer Run 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 Springer Run 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, Springer Run 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 Springer Run becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Springer Run 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 Springer Run 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 Springer Run (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 Springer Run 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 Springer Run 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 Springer Run, its successors and assigns.
7. This Order shall terminate upon Springer Run's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
Carey W. Brincefield  
Springer Run Park LLC

6/30/16  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

*revised March 2013*

**RECEIVED**  
JUL 06 2016  
ENVIRONMENTAL  
ENFORCEMENT

Table One: Springer Run Park LLC DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
3/31/15	Fecal Coliform	cnts/100m	200	570	185%	-	X	-

Outlet 001 DMR Exceedances - MAX. DAILY						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
3/31/15	Fecal Coliform	cnts/100m	400	570	43%	X	-	-

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		1	1	0

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:**

Springer Run LLC

**Receiving Stream:**

Springer Run

**Treatment System Design Maximum Flow:** 0.03 MGD

**Treatment System Actual Average Flow:** 0.015 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			4a	4bi	4bii										
a)	Amount of Pollutant Released	1 to 3	1	1	1										
b)	Toxicity of Pollutant	0 to 3	0	1	1										
c)	Sensitivity of the Environment	0 to 3	0	1	1										
d)	Length of Time	1 to 3	1	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	0	1	1										
<b>Average Potential for Harm Factor</b>			0.4	1	1	No									
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>													
	Degree of Non-Compliance	1 to 3	1	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 <=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
4a	Minor	Minor	\$400	5	\$2,000
4bi	Minor	Minor	\$1,000	1	\$1,000
4bii	Minor	Moderate	\$1,500	1	\$1,500
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
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>\$4,500</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		\$450
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)		30	(\$1,350)
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	(\$450)
6.2.b.3 - Cooperation with the Secretary		10	(\$450)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>(\$1,770)</b>
<b>Penalty =</b>			<b>\$2,730</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> Economic benefit not warranted.	