



west virginia department of environmental protection

Division of Water and Waste Management
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Charleston, WV 25304
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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: Springlea Hills Association
Chris Thomas
PO Box 723
Scott Depot, WV 25660

DATE: January 9, 2015

ORDER NO.: 8163

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 Springlea Hills Association (hereinafter “Springlea”).

FINDINGS OF FACT

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

1. Springlea operates a wastewater treatment lagoon located near Scott Depot, Putnam County, West Virginia. Springlea was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550353, on January 28, 2011.
2. On September 12, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Springlea’s WV/NPDES permit were observed and documented:
 - a. Section F-Springlea failed to properly operate and maintain all facilities and systems of treatment and control. Specifically, the pond was completely covered with duckweed.
 - b. 47CSR2 Section 3.2.a-Springlea caused conditions not allowable by creating distinctly visible suspended solids in waters of the State.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W12-40-225-KWS and W12-40-224-KWS were issued to Springlea.

3. On September 4, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Springlea's WV/NPDES permit were observed and documented:
 - a. Section F-Springlea failed to properly operate and maintain all facilities and systems of treatment and control. Specifically, the pond was black and covered with duckweed, and the chemical feeder tubes were plugged with waterlogged tablets.
 - b. 47CSR2 Section 3.2.a-Springlea caused conditions not allowable by creating distinctly visible suspended solids in waters of the State.

As a result of the aforementioned violations, NOV Nos. W13-40-342-KWS and W13-40-343-KWS were issued to Springlea.

4. On April 9, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of Springlea's WV/NPDES permit were observed and documented:
 - a. Section F-Springlea failed to properly operate and maintain all facilities and systems of treatment and control. Specifically, no dechlorination tablets were stocked.
 - b. Section A-Springlea had a major exceedance of its permitted parameters. Specifically, due to the absence of dechlorination tablets, an effluent sample collected by WVDEP personnel and analyzed for total residual chlorine yielded a result in excess of 2.2 mg/L (Table One).

As a result of the aforementioned violation, NOV No. W14-40-372-KWS was issued to Springlea.

5. On April 9, 2014, WVDEP personnel conducted a review of facility records from the time period of the 3rd quarter of 2012 through the 4th quarter of 2013. During this review, the following violations of the terms and conditions of Springlea's WV/NPDES permit were observed:
 - a. Section A-Seven (7) exceedances of Springlea's permit parameters were observed and documented (Table One). These exceedances can be further defined as:
 - i. Minor violations-one (1)
 - ii. Moderate violations-one (1)
 - iii. Major violations-five (5)
 - b. Section B.3-Springlea failed to submit the following Discharge Monitoring Reports (DMRs) within twenty (20) days following the end of the reporting period: the 3rd and 4th quarters of 2013.

As a result of the aforementioned violations, NOV No. W14-40-373-KWS was issued to Springlea.

6. On August 1, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Springlea's WV/NPDES permit were observed and documented:
 - a. Section B.3-Springlea failed to submit the following DMRs within twenty (20) days following the end of the reporting period: the 1st and 2nd quarters of 2014.
 - b. Section F-Springlea failed to properly operate and maintain all facilities and systems of treatment and control. Specifically, the pond was black and covered with duckweed, and the chlorine tablets were waterlogged and fused together.
 - c. Section A-Springlea had a major exceedance of its permitted parameters. Specifically, an effluent sample collected by WVDEP personnel and analyzed for fecal coliform yielded a result of 58,000 counts/100 mL (Table One).
 - d. 47CSR2 Section 3.2.a-Springlea caused conditions not allowable by creating distinctly visible suspended solids in waters of the State.

As a result of the aforementioned violations, NOV Nos. W14-40-398-KWS, W14-40-407-KWS, W14-40-408-KWS, and W14-40-409-KWS were issued to Springlea.

7. On October 29, 2014, WVDEP personnel and representatives of Springlea met to discuss the terms and conditions of the Order. Subsequent to the meeting, Springlea submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Springlea's ability to pay a civil administrative penalty.
8. On December 29, 2014, WVDEP personnel conducted a review of facility records from the time period of the 1st quarter of 2014 through the 3rd quarter of 2014. During this review, the following violations of the terms and conditions of Springlea's WV/NPDES permit were observed:
 - a. Section A-Two (2) exceedances of Springlea's permit parameters were observed and documented (Table One). These exceedances can be further defined as:
 - i. Major violations-two (2)
 - b. Section B.3-Springlea failed to submit the following Discharge Monitoring Reports (DMRs) within twenty (20) days following the end of the reporting period: the 1st and 2nd quarters of 2014.

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. Springlea shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, Springlea shall maintain a Class S certified Wastewater Treatment Plant Operator, as required in Section G.3 of the facility's WV/NPDES permit.

3. Within thirty (30) days of the effective date of this Order, Springlea shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Springlea will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0103110, Registration No. WVG550353, and Order No. 8163. 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.

4. Because of Springlea's Legislative Rule and permit violations, Springlea shall be assessed a civil administrative penalty of three thousand dollars (\$3,000) 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 \$500 due on or before March 1, 2015.

Payment 2 in the amount of \$500 due on or before April 1, 2015.

Payment 3 in the amount of \$500 due on or before May 1, 2015.

Payment 4 in the amount of \$500 due on or before June 1, 2015.

Payment 5 in the amount of \$500 due on or before July 1, 2015.

Payment 6 in the amount of \$500 due on or before August 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. Springlea 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, Springlea 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, Springlea 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 Springlea 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, Springlea 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 Springlea becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Springlea 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 Springlea 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 Springlea (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 Springlea 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 Springlea 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 Springlea, its successors and assigns.

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

Chris Thomas
Chris Thomas
Springlea Hills Association

1/22/15
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 26 2015

**ENVIRONMENTAL
ENFORCEMENT**

Table One:
Springlea DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 3rd quarter 2012 through 3rd quarter 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
3-31-13	Total Suspended Solids	mg/L	30	32	7%	X	-	-
1-31-13	Fecal Coliform	Cnts/100ml	200	60000	29900%	-	-	X
9-30-12	Fecal Coliform	Cnts/100ml	200	3700	1750%	-	-	X
9-30-12	Total Residual Chlorin	ug/L	28	320	1043%	-	-	X
9-30-14	Fecal Coliform	cnts/100ml	200	60000	29900%	-	-	X

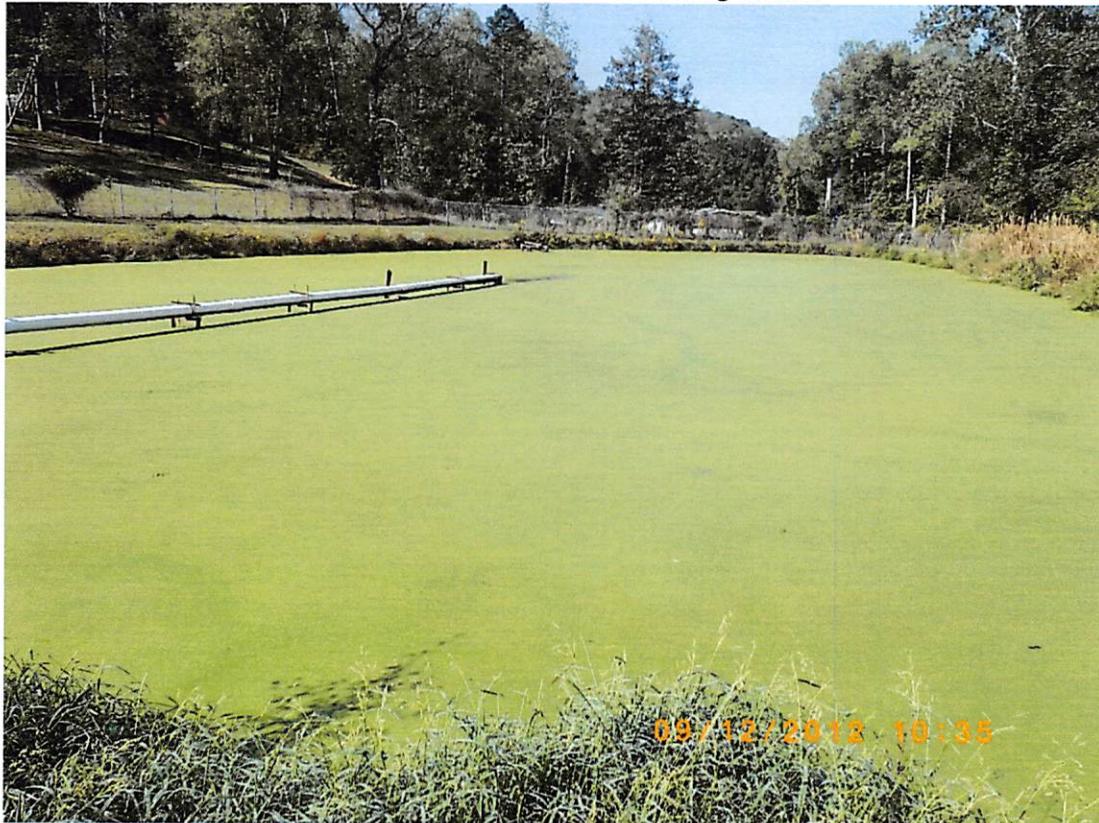
Outlet 001 DMR Exceedances - MAX. DAILY - 3rd quarter 2012 through 3rd quarter 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
1-31-13	Fecal Coliform	Cnts/100ml	400	60000	14900%	-	-	X
9-30-12	Total Residual Chlorin	ug/L	57	320	461%	-	X	-
9-30-12	Fecal Coliform	cnts/100ml	400	3700	825%	-	-	X
9-30-14	Fecal Coliform	cnts/100ml	400	60000	14900%	-	-	X

Outlet 001 DMR Exceedances - INSTANTANEOUS. MAX. - 3rd quarter 2012 through 3rd quarter 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
8-1-14	Fecal Coliform	Cnts/100ml	500	58000	11500%	-	-	X
4-9-14	Total Residual Chlorin	ug/L	70	2200	3043%	-	-	X

Outlet 001 Totals					Degree of non-compliance		
					Min	Mod	Maj
					1	1	9



Conditions not allowable in receiving stream



Pond covered with duckweed



Expansion of chlorine tablets in feeder tube



Saturated chlorine tablets in feeder tube and discoloration from septic effluent



Conditions not allowable in receiving stream



Discharge from 001



09/04/2013 13:21

Black, septic water beneath duckweed



09/04/2013 13:19

Surface of pond covered with duckweed



Empty dechlorination chemical feeder, 4-9-14



Total Residual Chlorine sample, 4-9-14



TRC > 2.2 mg/L, 4-9-14



Conditions not allowable in receiving stream



Pond covered with duckweed



Fused, waterlogged chlorine tablets



Black, septic water beneath duckweed



Samples collected from 001

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Springlea Hills Association Receiving Stream: _____

Treatment System Design Maximum Flow: 0.016 MGD

Treatment System Actual Average Flow: 0.006 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			2a	2b	3a	3b	4a	4b	5ai	5aii	5aiii	5b	6a	6b	6c
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1	1	1
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1	1	1	1	0	0	1	1
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1	1	1	1	0	0	1	1
d)	Length of Time	1 to 3	1	1	2	1	3	1	1	1	1	1	1	3	1
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1	1	1	1	0	0	1	1
Average Potential for Harm Factor			1	1	1.2	1	1.4	1	1	1	1	0.4	0.4	1.4	1
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	3	3	3	3	1	2	3	3	3	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.

		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	\$2,000	1	\$2,000
2b	Minor	Major	\$2,000	1	\$2,000
3a	Moderate	Major	\$4,200	1	\$4,200
3b	Minor	Major	\$2,000	1	\$2,000
4a	Moderate	Major	\$4,400	1	\$4,400
4b	Minor	Major	\$2,000	1	\$2,000
5ai	Minor	Minor	\$1,000	1	\$1,000
5aii	Minor	Moderate	\$1,500	1	\$1,500
5aiii	Minor	Major	\$2,000	5	\$10,000
5b	Minor	Major	\$1,700	2	\$3,400
6a	Minor	Major	\$1,700	2	\$3,400
6b	Moderate	Major	\$4,400	1	\$4,400
6c	Minor	Major	\$2,000	1	\$2,000
6d	Minor	Major	\$2,000	1	\$2,000
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
Total Base Penalty					\$44,300

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		\$4,430
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$800		\$800
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			\$0
6.2.b.3 - Cooperation with the Secretary		10	(\$4,430)
6.2.b.5 - Ability to Pay		95.101	(\$42,130)
Penalty Adjustments			(\$41,300)
Penalty =			\$3,000

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$800
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	\$800
Comments: Avoided costs of failing to sample/submit 4 quarters of DMRs (\$200 x 4)	