



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: David and Melody Douglas
Valley Vista Mobile Home Park
709 A Washington St W
Charleston, WV 25302

DATE: April 5, 2013
ORDER NO.: 7763

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 David and Melody Douglas (hereinafter "Douglas").

FINDINGS OF FACT

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

1. Douglas owns a sewer treatment package plant at the Valley Vista Mobile Home Park located in Comfort, Boone County, West Virginia. Douglas was issued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550681, on August 18, 2003. The WV/NPDES permit was reissued on September 6, 2004 and September 8, 2011.
2. On October 12, 2011, 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 Douglas' WV/NPDES permit were observed and documented:
 - a. F.1-Douglas failed to properly operate and maintain the plant.
 - i. Both chemical feeders for disinfection were empty.
 - ii. The clarifier skimmer was not functioning.
 - iii. The influent line was broken and flowing across the ground into the plant.

Promoting a healthy environment.

- b. B-Douglas failed to submit Discharge Monitoring Reports (DMRs).

As a result of the aforementioned violations, Notice of Violations (NOV) Nos. W11-03-023-BMW and W11-03-024-BMW were issued to Douglas.

3. On October 24, 2011, WVDEP personnel met with Douglas at the Valley Vista Mobile Home Park plant to discuss options for achieving compliance with its WV/NPDES permit. During this visit, the following issues were discussed:
 - a. Methods for completing the influent line repair.
 - b. Failing structural integrity of the plant.
 - c. Improper operation and maintenance of the plant.
4. Subsequent visits by WVDEP personnel showed no influent flowing across the ground.
5. On September 27, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and Douglas' WV/NPDES permit were observed and documented:
 - a. F.1-Douglas failed to properly operate and maintain the plant. Specifically, the clarifier was not functioning, and the plant had rusted beyond operational levels.
 - b. B-Douglas failed to submit DMRs.
 - c. F.3-Douglas failed to report a bypass of treatment. Influent bypassed the entire plant and flowed into waters of the State.
 - d. 47CSR2 Section 3.2.a-Douglas caused conditions not allowable in waters of the State by creating distinctly visible floating or settleable solids.
 - e. 47CSR2 Section 3.2.b-Douglas caused conditions not allowable in waters of the State by creating deposits or sludge banks on the bottom.

As a result of the aforementioned violations, NOV Nos. W12-03-081-BMW, W12-03-082-BMW, W12-03-083-BMW, and W12-03-084-BMW were issued to Douglas.

6. On November 15, 2012, WVDEP personnel conducted a record review, and the following violations of Douglas' WV/NPDES permit were observed and documented:
 - a. B-Douglas failed to submit the following DMRs within twenty (20) days of the end of the monitoring period: 1st, 2nd, and 3rd quarters of 2011 and 2nd and 3rd quarters of 2012.
7. On March 12, 2013, WVDEP personnel and representatives of Douglas met to discuss the terms and conditions of this Order. During the meeting, it was determined that all of the aforementioned missing DMRs had been received by WVDEP personnel, although the reports were not submitted within the required timeframe specified in Section B of Douglas' WV/NPDES permit.

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. Douglas shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. In accordance with Section G.6 of WV/NPDES Permit No. WV0103110, the operator of the Valley Vista Mobile Home Park plant shall attend the next available 1-S training course sponsored by the Environmental Training Center at Cedar Lakes, WV.
3. Within twenty (20) days of the effective date of this Order, Douglas shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Douglas will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. 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 Douglas' Legislative Rule and permit violations, Douglas shall be assessed a civil administrative penalty of nine thousand six hundred thirty dollars (\$9,630) 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 be mailed to:

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

OTHER PROVISIONS

1. Douglas 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, Douglas 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, Douglas 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 Douglas 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, Douglas 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 Douglas 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 Douglas 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 Douglas (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 Douglas 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 Douglas 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 Douglas, its successors and assigns.

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

David and Melody Douglas May 30, 2013
Valley Vista Mobile Home Park Date

Public Notice begin:

RECEIVED

_____ Date

Public Notice end:

MAY 31 2013

_____ Date

ENVIRONMENTAL
ENFORCEMENT

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

_____ Date



09/27/2012 15:55



09/27/2012 18:55



09/27/2012 15:55



09/27/2012 15:59



Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: David and Melody Douglas Receiving Stream: _____

Treatment System Design Maximum Flow: _____ 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#													
			5a	5c	5d	5e	6a									
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	0	1	1	0									
c)	Sensitivity of the Environment	0 to 3	1	0	1	1	0									
d)	Length of Time	1 to 3	2	1	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	1	0	1	1	0									
Average Potential for Harm Factor			1.2	0.4	1	1	0.4	No								
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	1	3	2	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 -			\$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)			\$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	(\$1,200)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,200)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$2,370)
Penalty =			\$9,630

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:	