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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: (304) 926-0495  
Fax: (304) 926-0463

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: West End Group of Investors  
Attn: John Wilmouth  
c/o: Carl M. Freeman Companies  
18330 Village Center Dr 2nd Floor  
Olney, MD 20832

DATE: August 29, 2012

ORDER NO.: 7672

**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 West End Group of Investors (hereinafter "WEGI").

**FINDINGS OF FACT**

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

1. WEGI operates a construction operation with land disturbance located in Ranson, Jefferson County, West Virginia. WEGI was issued WV/NPDES General Water Pollution Control Permit No. WV0115924, General Permit Registration No. WVR100846, on April 13, 2004. Said registration expired on December 1, 2008.
2. Establishments with discharges composed entirely of stormwater associated with construction activities disturbing more than one (1) acre must obtain a permit from the West Virginia Department of Environmental Protection (WVDEP) pursuant to WV State Code 22-11-8 and as described in WV Legislative Rule 47CSR10.
3. WVDEP advised WEGI in mid 2007, mid 2008, and April 2011 to reapply for permit coverage under the WV/NPDES General Water Pollution Control Permit for Storm Water Associated with Construction Activity.

Promoting a healthy environment.

4. WEGI failed to reapply for permit coverage under the aforementioned WV/NPDES General Water Pollution Control Permit, a violation of WV Legislative Rule 47CSR10 Section 5.2.
5. On March 13, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, it was observed that all areas disturbed during construction were not adequately stabilized in order to allow WV/NPDES permit termination. As a result of the aforementioned violation, Notice of Violation (NOV) No. NE-12-19-025-201 was issued to WEGI.
6. On August 2, 2012, WVDEP personnel and John Wilmouth representing WEGI conducted a meeting by telephone to discuss the terms of this Order.

### **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. WEGI shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within forty-five (45) days of the effective date of this Order, WEGI shall satisfactorily stabilize the formerly permitted area. Satisfactory stabilization means all disturbed area shall be covered by some permanent protection. Stabilization includes pavement, buildings, waterways (riprap, concrete, grass, or pipe), a healthy, vigorous stand of grass that uniformly covers more than seventy percent (70%) of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other approved structure or material. WEGI shall contact WVDEP to confirm that satisfactory stabilization has been completed. Environmental Enforcement may be contacted at:

**WVDEP Environmental Inspector Supervisor  
NE Regional Environmental Enforcement Office  
HC 63 Box 2545  
Romney, WV 26757**

3. Because of WEGI's WV Legislative Rule violations, WEGI shall be assessed a civil administrative penalty of five thousand three hundred ten dollars (\$5,310) 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

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

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

Chris Garland 9/10/12  
~~John Wilmoth~~ Chris Garland - VP of Development Date  
West End Group of Investors

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

*revised September 2011*

**RECEIVED**

SEP 12 2012

ENVIRONMENTAL  
ENFORCEMENT



Figure 1 – Non stabilized ditch



Figure 2 – Non vegetated area

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: West End Group of Investors, LLC Receiving Stream: Flowing Springs Run

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#											
			4											
a)	Amount of Pollutant Released	1 to 3	1											
b)	Toxicity of Pollutant	0 to 3	1											
c)	Sensitivity of the Environment	0 to 3	1											
d)	Length of Time	1 to 3	3											
e)	Actual Exposure and Effects thereon	0 to 3	1											
<b>Average Potential for Harm Factor</b>			1.4	No										
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 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.





## 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 -	20		\$880
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			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$910</b>
<b>Penalty =</b>			<b>\$5,310</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>	