



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
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Woodland Hills Estates Inc.
Jerry Peyton
110 Woodland Drive
Chapmanville, WV 25508

DATE: April 6, 2012

ORDER NO.: 7553

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 Woodland Hills Estates Inc. (hereinafter "Woodland Hills").

FINDINGS OF FACT

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

1. Woodland Hills operates a sewage treatment facility located near King Shoals, Logan County, West Virginia. Woodland Hills was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG550249, on August 2, 2011.
2. A West Virginia Department of Environmental Protection (WVDEP) review of agency files revealed that Woodland Hills Estates exceeded its Fecal Coliform and BOD effluent limitations during the 4th Quarter 2008. Total Residual Chlorine and BOD effluent limitations were also exceeded during the 1st Quarter 2009. These exceedances are violations of Woodland Hills' WV/NPDES Permit Section A.

As a result of the aforementioned violations, NOV No. W10-23-008-JCC was issued to Woodland Hills.

3. On July 16, 2010, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Woodland Hills' WV/NPDES permit were observed and documented:

Promoting a healthy environment.

- a. F.1- Permittee failed to properly operate and maintain all facilities and systems of treatment and control, including the aeration system, clarifier, chlorine contact, and de-chlorination system.
- b. E.13- Permittee failed to post a permanent marker, along the stream, at the discharge point from the plant.
- c. B- Permittee failed to submit Discharge Monitoring Reports (DMRs) for the following periods: 2nd, 3rd, and 4th quarters 2009; 1st and 2nd quarters 2010.

As a result of the aforementioned violations, NOV Nos. W10-23-006-JCC and W10-23-007-MBC were issued to Woodland Hills.

4. On August 9, 2010, WVDEP issued Order No. 7090 to Woodland Hills. The Order described Operation and Maintenance deficiencies, failure to submit DMRs, and DMR exceedances. In response to these violations, WVDEP ordered Woodland Hills to submit a plan of corrective action.
5. On September 15, 2011, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rule and Woodland Hills' WV/NPDES permit were observed and documented:
 - a. F.1- Permittee failed to properly operate and maintain all facilities and systems of treatment and control.
 - b. B- Permittee failed to submit DMRs for the following periods: 4th quarter 2010; 1st and 2nd quarters 2011.
 - c. 47 CSR 2-3.2- Permittee allowed distinctly visible solids to be discharged into waters of the State creating conditions not allowable.

As a result of the aforementioned violations, NOV Nos. W11-23-090-MBC, W11-23-091-MBC and W11-23-092-MBC were issued to Woodland Hills.

6. On January 9, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Woodland Hills' WV/NPDES permit were observed and documented:
 - a. F.1- Permittee failed to properly operate and maintain all facilities and systems of treatment and control.
 - b. B.1- Permittee failed to submit DMRs for the following periods: 4th quarter 2010; 1st, 2nd, and 3rd quarters 2011.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W12-23-122-MBC and W12-23-123-MBC were issued to Woodland Hills.

7. On March 10, 2012, WVDEP personnel and representatives of Woodland Hills met to discuss the terms and conditions of this Order.

8. On March 26, 2012, Woodland Hills submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Woodland Hills' ability to pay a civil administrative penalty.

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. Woodland Hills shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. The operator shall register for and attend the next available 1-S certification course sponsored by the Environmental Training Center (ETC) as per Section G "Other Requirements" of the facility's WV/NPDES permit. Attachment One (1) contains the 2012 ETC training Schedule.
3. Within twenty (20) days of the effective date of this Order, Woodland Hills shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Woodland Hills 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 Woodland Hills' Legislative Rule and permit violations, Woodland Hills shall be assessed a civil administrative penalty of one thousand five hundred seventy-one dollars (\$1,571) 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 \$261.83 due on or before June 1, 2012.
Payment 2 in the amount of \$261.83 due on or before July 1, 2012.
Payment 3 in the amount of \$261.83 due on or before August 1, 2012.
Payment 4 in the amount of \$261.83 due on or before September 1, 2012.
Payment 5 in the amount of \$261.83 due on or before October 1, 2012.
Payment 6 in the amount of \$261.85 due on or before November 1, 2012.

5. 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. Woodland Hills 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, Woodland Hills 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, Woodland Hills 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 Woodland Hills 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, Woodland Hills 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 Woodland Hills 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 Woodland Hills 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 Woodland Hills (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 Woodland Hills 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 Woodland Hills 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 Woodland Hills, its successors and assigns.
7. This Order shall terminate upon Woodland Hills' notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Jerry Peyton
Woodland Hills Estates Inc.

4-9-2012

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised September 2011

RECEIVED

APR 10 2012

ENVIRONMENTAL
ENFORCEMENT