



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
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: Mark Lewis
Skyview Heights Maintenance Association
3532 Sky Oak Drive
Huntington, WV 25701

DATE: December 1, 2011

ORDER NO.: 7415

AND

Leonard L. Lawrence
420 Porter Rd
Charleston, WV 25314

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 Leonard L. Lawrence (hereinafter "Lawrence") and/or Skyview Heights Maintenance Association (hereinafter "Skyview").

FINDINGS OF FACT

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

1. Skyview operates a sewage treatment pond located near Lavalette, Wayne County, West Virginia. Lawrence is the owner of the property which contains the sewage treatment pond operated by Skyview. Skyview was issued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550562 on March 29, 2006.
2. On June 16th, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of this facility and determined that it has been operating without a valid WV/NPDES permit since August 6, 2009, a violation of WV

Code 22-11-8. Notice of Violation (NOV) No. W11-50-139-KWS was issued for this deficiency.

3. This facility has demonstrated a history of repeatedly allowing its permit coverage to lapse due to nonpayment of fees.
4. Improper operation and maintenance practices were observed during the aforementioned inspection and effluent was bypassing disinfection prior to its discharge to the receiving stream.
5. On October 3, 2011, Skyview submitted a WV/NPDES permit application to WVDEP.
6. On October 6, 2011, Skyview paid the fee invoice owed to WVDEP.
7. On November 8, 2011, WVDEP personnel and representatives of Skyview met to discuss the terms and conditions of this Order.
8. On November 18, 2011, Skyview's WV/NPDES permit was reissued, with an expiration date of September 23, 2015.

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. Lawrence and/or Skyview shall immediately take all measures to initiate compliance with all pertinent laws and rules and conditions of its WV/NPDES permit.
2. Within thirty (30) days of entry of this Order, Lawrence and/or Skyview shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Lawrence and/or Skyview will achieve compliance with all pertinent laws and rules and conditions of its WV/NPDES permit. 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.

3. Because of Lawrence and/or Skyview's WV Code violations, Lawrence and/or Skyview shall be assessed a civil administrative penalty of four thousand two hundred fifty dollars (\$4,250) 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 \$354.16 due on or before February 1, 2012.

Payment 2 in the amount of \$354.16 due on or before March 1, 2012.

Payment 3 in the amount of \$354.16 due on or before April 1, 2012.

Payment 4 in the amount of \$354.16 due on or before May 1, 2012.

Payment 5 in the amount of \$354.16 due on or before June 1, 2012.

Payment 6 in the amount of \$354.16 due on or before July 1, 2012.

Payment 7 in the amount of \$354.16 due on or before August 1, 2012.

Payment 8 in the amount of \$354.16 due on or before September 1, 2012.

Payment 9 in the amount of \$354.16 due on or before October 1, 2012.

Payment 10 in the amount of \$354.16 due on or before November 1, 2012.

Payment 11 in the amount of \$ 354.16 due on or before December 1, 2012.

Payment 12 in the amount of \$354.24 due on or before January 1, 2013.

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. Lawrence and/or Skyview 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, Lawrence and/or Skyview 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, Lawrence and/or Skyview 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 Lawrence and/or Skyview 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, Lawrence and/or Skyview 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 Lawrence and/or Skyview 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 Lawrence and/or Skyview 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 Lawrence and/or Skyview (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 Lawrence and/or Skyview 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 Lawrence and/or Skyview 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 Lawrence and/or Skyview, its successors and assigns.

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

Leonard L. Lawrence

Date

AND/OR

Mark Lewis
Skyview Heights Maintenance Association

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

revised November 2010