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west virginia department of environmental protection

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Division of Water and Waste Management  
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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: Mr. William Perry, President  
Turnertown-Riverview Heights  
93 Riverview Heights  
Weston, WV 26452

DATE: March 7, 2011

ORDER NO.: 7115

**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 Turnertown-Riverview Heights (hereinafter "Turnertown").

**FINDINGS OF FACT**

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

1. Turnertown operates a wastewater treatment plant located at Turnertown, Lewis County, West Virginia. Turnertown was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG550466 on September 21, 2004.
2. On March 5, 2007, West Virginia Department of Environmental Protection (WVDEP) personnel met with Turnertown in a pre-enforcement meeting to discuss non-compliance issues with its wastewater treatment system. The following issues were discussed:
  - a. Turnertown must begin proper operation and maintenance of its sewage treatment plant immediately.
  - b. Must obtain a qualified sewage treatment operator within 20 days.
  - c. Explore the possibility of an early transfer of operation and maintenance to the City of Weston within 20 days.
  - d. Submit all past due discharge monitoring reports (DMRs) within 20 days.
  - e. Submit a plan to address inflow and infiltration (I&I) problems within 20 days.

Promoting a healthy environment.

3. On March 27, 2007, Rick York, President of Turnertown, submitted a letter to the WVDEP summarizing the following corrective actions:
  - a. Ed Hubbs, chief operator at Weston POTW, was retained as the Turnertown wastewater treatment plant operator.
  - b. Mr. Hubbs had access to equipment necessary to smoke test the collection system.
  - c. Turnertown expected the facility to return to compliance.
4. On March 24, 2009, WVDEP personnel conducted an inspection of Turnertown and discovered several deficiencies. The effluent was cloudy and DMRs had not been received at the regional office since the 4<sup>th</sup> Qtr 2007, a violation of Section B.2 of its WV/NPDES permit. Notice of Violation (NOV) No. NW-M-SW-032409-01 was issued to Turnertown.
5. During the inspection on March 24, 2009, it was noted that the wastewater treatment plant appeared to have been recently washed out and had created a sludge blanket in the receiving stream, a violation of Legislative Rule Title 47, Series 2, Section 3 (47CSR2-3). NOV No. NW-M-SW-032409-02 was issued to Turnertown.
6. On March 17, 2010, WVDEP personnel conducted an inspection of Turnertown and discovered several deficiencies. The trash trap was full of solids; there were very little biosolids in the wastewater treatment plant; the effluent was cloudy; there were no dechlorination tablets in the dechlorination tablet feeder.
7. During the inspection on March 17, 2010, it was noted that Turnertown had not submitted its DMRs, a violation of Section B.2 of its WV/NPDES permit. NOV No. NW-M-SW-031710-01 was issued to Turnertown.
8. During the inspection on March 17, 2010, it was noted that Turnertown failed to comply with permitted effluent limits for the 1<sup>st</sup> quarter of 2009, a violation of Section A.1 of its WV/NPDES permit. NOV No. NW-M-SW-031710-02 was issued to Turnertown.
9. During the inspection on March 17, 2010, it was noted that Turnertown failed to properly operate and maintain its wastewater treatment plant, a violation of Section F of its WV/NPDES permit. Specifically, excessive I&I was affecting the proper operation of the treatment plant. NOV No. NW-M-SW-031710-03 was issued to Turnertown.
10. A meeting between WVDEP and Turnertown was held on October 28, 2010 to discuss the terms of this Order. Subsequent to the meeting, Turnertown submitted financial information which demonstrated a reduced 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. Turnertown shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within twenty (20) days of entry of this Order, Turnertown shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Turnertown will achieve compliance with all terms and conditions of its WV/NPDES permit. This plan of corrective action shall include a schedule to address the inflow and infiltration of the collections system. The plan of corrective action shall be submitted to:

**Environmental Inspector Supervisor**  
**NE Regional Environmental Enforcement Office** ✓  
**2031 Pleasant Valley Road**  
**Fairmont, WV 26554**

A copy of this plan shall be submitted to:

**Chief Inspector**  
**Environmental Enforcement - Mail Code #031328**  
**WVDEP**  
**601 57<sup>th</sup> 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. Turnertown shall immediately submit all DMRs as required by its WV/NPDES permit.
4. Because of Turnertown's Legislative Rule and permit violations, Turnertown shall be assessed a civil administrative penalty of two thousand five hundred thirty dollars (\$2,530) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry 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**  
**WVDEP**  
**601 57<sup>th</sup> Street SE**  
**Charleston, WV 25304**

### **OTHER PROVISIONS**

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

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

Will I. Remy, Pres.  
Turnertown-Riverview Heights

3-17-11  
Date

Public Notice begin: \_\_\_\_\_  
Date

Public Notice end: \_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

*revised April 2010*

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Turnertown- Riverview Heights Receiving Stream: Trib of West Fork River

Treatment System Design Maximum Flow: N/D MGD

Treatment System Actual Average Flow: 0.012 MGD (if known)

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

| 1)                                       | Potential for Harm Factor           | Factor Range        | FOF# |     |   |   |    |    |    |    |    |    |    |    |    |    |    |
|--|-------------------------------------|---------------------|------|-----|---|---|----|----|----|----|----|----|----|----|----|----|----|
|  |                                     |                     | 4    | 5   | 7 | 8 |    |    |    |    |    |    |    |    |    |    |    |
| a)                                       | Amount of Pollutant Released        | 1 to 3              | 1    | 2   | 1 | 1 |    |    |    |    |    |    |    |    |    |    |    |
| b)                                       | Toxicity of Pollutant               | 0 to 3              | 1    | 1   | 1 | 1 |    |    |    |    |    |    |    |    |    |    |    |
| c)                                       | Sensitivity of the Environment      | 0 to 3              | 1    | 1   | 1 | 1 |    |    |    |    |    |    |    |    |    |    |    |
| d)                                       | Length of Time                      | 1 to 3              | 1    | 1   | 1 | 1 |    |    |    |    |    |    |    |    |    |    |    |
| e)                                       | Actual Exposure and Effects thereon | 0 to 3              | 1    | 2   | 1 | 1 |    |    |    |    |    |    |    |    |    |    |    |
| <b>Average Potential for Harm Factor</b> |                                     |                     | 1    | 1.4 | 1 | 1 | No |
| 2)                                       | <b>Extent of Deviation Factor</b>   | <b>Factor Range</b> |      |     |   |   |    |    |    |    |    |    |    |    |    |    |    |
|  | Degree of Non-Compliance            | 1 to 3              | 2    | 2   | 2 | 2 |    |    |    |    |    |    |    |    |    |    |    |

**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 -                                  | 10         |            | \$790                    |
| 6.2.b.4 - Compliance/noncompliance history                                 | 10         |            | \$790                    |
| 6.2.b.6 - Economic benefits -<br>(flat monetary increase)                  |            |            | \$0                      |
| 6.2.b.7 - Public Interest -<br>(flat monetary increase)                    |            |            | \$0                      |
| 6.2.b.8 - Loss of enjoyment -<br>(flat monetary increase)                  |            |            | \$0                      |
| 6.2.b.9 - Investigative costs -<br>(flat monetary increase)                |            |            | \$0                      |
| 6.2.b.10 - Other factors (size of violator)                                |            |            | \$0                      |
| 6.2.b.10 - Additional Other Factors -<br>Increase (flat monetary increase) |            |            | \$0                      |
| 6.2.b.10 - Additional Other Factors -<br>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   |            | 88.359     | (\$6,980)                |
| <b>Penalty Adjustments</b>   |            |            | <b>(\$5,370)</b>         |
| <b>Penalty =</b>   |            |            | <b>\$2,530</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>   |                        |