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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  
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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: City of White Sulphur Springs  
Attn: Debra Fogus, Mayor  
34 W. Main St.  
White Sulphur Springs, WV 24986

DATE: December 10, 2010

ORDER NO.: 7114

**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 the City of White Sulphur Springs (hereinafter "WSS").

**FINDINGS OF FACT**

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

1. WSS operates a sewage treatment plant located at White Sulphur Springs, Greenbrier County, West Virginia. WSS was issued WV/NPDES Water Pollution Control Permit No. WV0084000 on May 29, 2009.
2. On July 5, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel responded to a citizen complaint of dead fish in Harts Run. During the complaint investigation, the following conditions were observed and documented:
  - a. Observations at Harts Run located small dead minnows. More dead minnows were found behind the Wendy's restaurant. The stream and tributaries were checked through White Sulphur Springs and Harts Run. Upon investigating upstream of the dead minnows, the White Sulphur Springs sewage treatment plant was determined to be discharging improperly treated wastewater to Howard Creek causing significant discoloration and heavy odor in the stream. The plume was causing a significant impact to Howard Creek for approximately 200 yards at the time of investigation. Inspection of the plant facilities revealed the clarifiers were operating improperly,

Promoting a healthy environment.

likely due to lack of proper aeration, and discharging solids. Disinfection from the ultraviolet lights was compromised due to the turbidity of the discharge.

3. The following two violations were observed and documented during the July 5, 2010 complaint investigation:
  - a. Improper operation and maintenance of the sewage treatment plant in violation of the terms and conditions of WSS's WV/NPDES permit (Appendix A, Section II.1.)
  - b. The discharge from the sewage treatment plant caused conditions not allowable in Howard's Creek in violation of WV Legislative Rule Title 47, Series 2, Section 3 by causing:
    - i. A distinctly visible plume of floating or settleable/suspended solids.
    - ii. Odors in the vicinity of the water.
    - iii. Distinctly visible color.
    - iv. Materials in concentrations which are harmful, hazardous or toxic to animal or aquatic life.

As a result of the aforementioned violations, Notice of Violation No. W10-13-WSS01-SK was issued to WSS.

4. On July 28, 2010, WVDEP personnel conducted a review of the facility's files from the time period of May 2009-May 2010. During this review, sixty (60) exceedances of WSS's effluent limitations were documented (Refer to Attachment A). Each exceedance is a violation of the terms and conditions of WSS's WV/NPDES permit (Section A.001.) and can be further described as:
  - a. Minor violations-18
  - b. Moderate violations-21
  - c. Major violations-21
5. A meeting between WVDEP and WSS was held on October 18, 2010 to discuss the terms of this Order. Subsequent to that meeting, WSS has submitted financial information to WVDEP for its review. The financial information demonstrated WSS's 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. WSS 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, WSS shall submit for approval a proposed corrective action plan and schedule, outlining action items and completion dates for how and when WSS will achieve compliance with all terms and conditions of its WV/NPDES permit and/or pertinent laws and rules. The corrective action plan shall be submitted to:

**Environmental Inspector Supervisor  
SE Regional Environmental Enforcement Office  
116 Industrial Drive  
Oak Hill, WV 25901**

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 corrective action plan and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable corrective action plan and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of WSS's Legislative Rule and permit violations, WSS shall be assessed a civil administrative penalty of thirteen thousand five hundred eighty dollars (\$13,580) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within sixty (60) 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  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

**OTHER PROVISIONS**

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

Debra Fogus  
\_\_\_\_\_  
Mayor Debra Fogus  
City of White Sulphur Springs

12-13-10  
\_\_\_\_\_  
Date

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

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

\_\_\_\_\_  
Scott G. Mandirola, Director  
Division of Water and Waste Management  
*revised April 2010*

\_\_\_\_\_  
Date



WSS STP Incident      7-5-10  
Howard Creek behind Wendy's

Howard Creek behind Lift station at Harts Run and  
SK



WSS STP Incident

7-5-10

upstream of WSS STP outfall

SK



WSS STP Incident

7-5-10

Below WSS STP outfall, manhole prior to discharge

SK



WSS STP Incident

7-5-10

Post Aeration Basin, Ultraviolet Unit

SK



WSS STP Incident

7-5-10

Clarifiers

SK



WSS STP Incident

7-5-10

Clarifiers, Influent

SK

# **Attachment A**

(Two pages follow this cover sheet.)

Outlet 001 DMR Exceedances - AVG. MONTHLY - May/2009 through May/2010						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
						-	-	-
Oct. 2009	Ammonia Nitrogen	mg/l	3.2	6.7	109%	-	X	-
Oct. 2009	Ammonia Nitrogen	Lbs/day	42.7	57.1	34%	X	-	-
Nov. 2009	Ammonia Nitrogen	mg/l	3.2	4.35	36%	X	-	-
Dec. 2009	Ammonia Nitrogen	mg/l	3.2	4.47	40%	X	-	-
Jan. 2010	Ammonia Nitrogen	mg/l	3.2	4.6	44%	-	X	-
Feb. 2010	Ammonia Nitrogen	mg/l	3.20	5.8	81%	-	X	-
Mar. 2010	Ammonia Nitrogen	mg/l	3.20	3.75	17%	X	-	-
Apr. 2010	Ammonia Nitrogen	mg/l	3.20	6.3	97%	-	X	-
May. 2010	Ammonia Nitrogen	mg/l	3.20	7.9	147%	-	X	-
May. 2010	Ammonia Nitrogen	Lbs/day	42.70	44.8	5%	X	-	-
Nov. 2009	Fecal Coliform	cnts/100 ml	200.00	618	209%	-	X	-
Dec. 2009	Fecal Coliform	cnts/100 ml	200.00	3338	1569%	-	-	X
Jan. 2010	Fecal Coliform	cnts/100 ml	200.00	4721	2261%	-	-	X
Feb. 2010	Fecal Coliform	cnts/100 ml	200.00	3041	1421%	-	-	X
Apr. 2010	Fecal Coliform	cnts/100 ml	200.00	1564	682%	-	-	X
May. 2010	Fecal Coliform	cnts/100 ml	200.00	1154	477%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY -May 2009 through May 2010						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
						X	-	-
Oct. 2009	Ammonia Nitrogen	mg/l	6.40	8.7	36%	X	-	-
Oct. 2009	Ammonia Nitrogen	Lbs/day	85.40	98.9	16%	X	-	-
Nov. 2009	Ammonia Nitrogen	mg/l	6.40	7.05	10%	X	-	-
Nov. 2009	Ammonia Nitrogen	Lbs/day	85.40	96.66	13%	X	-	-
Dec. 2009	Ammonia Nitrogen	mg/l	6.40	7.65	20%	X	-	-
Dec. 2009	Ammonia Nitrogen	Lbs/day	85.40	111.1	30%	X	-	-
Jan. 2010	Ammonia Nitrogen	mg/l	6.40	9.22	44%	X	-	-
Jan. 2010	Ammonia Nitrogen	Lbs/day	85.40	106.7	25%	X	-	-
Feb. 2010	Ammonia Nitrogen	mg/l	6.40	8.5	33%	X	-	-
Apr. 2010	Ammonia Nitrogen	mg/l	6.40	8.16	28%	X	-	-
Apr. 2010	Ammonia Nitrogen	Lbs/day	85.40	99.8	17%	X	-	-
May. 2010	Ammonia Nitrogen	mg/l	6.40	8.84	38%	X	-	-
May. 2009	Fecal Coliform	cnts/100ml	400.00	430	8%	X	-	-
Aug. 2009	Fecal Coliform	cnts/100ml	400.00	1360	240%	-	X	-
Sep. 2009	Fecal Coliform	cnts/100ml	400.00	2200	450%	-	X	-
Oct. 2009	Fecal Coliform	cnts/100ml	400.00	6000	1400%	-	-	X
Nov. 2009	Fecal Coliform	cnts/100ml	400.00	6000	1400%	-	-	X
Dec. 2009	Fecal Coliform	cnts/100ml	400.00	6000	1400%	-	-	X
Dec. 2009	Fecal Coliform	cnts/100ml	400.00	6000	1400%	-	-	X
Dec. 2009	Fecal Coliform	cnts/100ml	400.00	6000	1400%	-	-	X
Dec. 2009	Fecal Coliform	cnts/100ml	400.00	6000	1400%	-	-	X
Jan. 2010	Fecal Coliform	cnts/100ml	400.00	6000	1400%	-	-	X
Jan. 2010	Fecal Coliform	cnts/100ml	400.00	6000	1400%	-	-	X
Jan. 2010	Fecal Coliform	cnts/100ml	400.00	2300	475%	-	X	-

Jan. 2010	Fecal Coliform	cnts/100ml	400.00	6000	1400%	-	-	X
Feb. 2010	Fecal Coliform	cnts/100ml	400.00	3700	825%	-	-	X
Feb. 2010	Fecal Coliform	cnts/100ml	400.00	3500	775%	-	-	X
Feb. 2010	Fecal Coliform	cnts/100ml	400.00	1100	175%	-	X	-
Feb. 2010	Fecal Coliform	cnts/100ml	400.00	6000	1400%	-	-	X
Apr. 2010	Fecal Coliform	cnts/100ml	400.00	6000	1400%	-	-	X
Apr. 2010	Fecal Coliform	cnts/100ml	400.00	6000	1400%	-	-	X
Apr. 2010	Fecal Coliform	cnts/100ml	400.00	6000	1400%	-	-	X
May. 2010	Fecal Coliform	cnts/100ml	400.00	1290	223%	-	X	-
May. 2010	Fecal Coliform	cnts/100ml	400.00	1200	200%	-	X	-
May. 2010	Fecal Coliform	cnts/100ml	400.00	3700	825%	-	-	X

Outlet 001 Exceedances - Minimum 85% Removal - AVG. MONTHLY - May 2009 through May 2010							Degree of non-compliance		
Date	Parameter	Units	Reported influent concentration	Reported effluent concentration	% Exceedance	Min	Mod	Maj	
						Dec. 2009	BOD % removal	mg/l	82.2
Feb. 2010	BOD % removal	mg/l	96.25	15.50	81%	-	X	-	
Apr. 2010	BOD % removal	mg/l	68.6	18.4	68%	-	X	-	
Nov. 2009	Suspended Solids % removal	mg/l	79.5	20.5	70%	-	X	-	
Dec. 2009	Suspended Solids % removal	mg/l	47	10.4	74%	-	X	-	
Jan. 2010	Suspended Solids % removal	mg/l	65	12.75	77%	-	X	-	
Feb. 2010	Suspended Solids % removal	mg/l	81.75	17.75	74%	-	X	-	
Mar. 2010	Suspended Solids % removal	mg/l	72.75	13	79%	-	X	-	
Apr. 2010	Suspended Solids % removal	mg/l	72.60	14	77%	-	X	-	

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	18	21	21

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: City of White Sulphur Springs Receiving Stream:

Howard's Creek

Treatment System Design Maximum Flow: 1.6 MGD

Treatment System Actual Average Flow: N/D MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#													
			3a.	3b.	4a.	4b.	4c.									
a)	Amount of Pollutant Released	1 to 3	1	2	1	1	2									
b)	Toxicity of Pollutant	0 to 3	1	3	1	1	1									
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1									
d)	Length of Time	1 to 3	1	1	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	2	2	1	1	1									
<b>Average Potential for Harm Factor</b>			1.2	1.8	1	1	1.2	No								
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>														
	Degree of Non-Compliance	1 to 3	3	3	1	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 -	15		\$22,005
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)		\$9,922	(\$9,922)
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		99	(\$145,233)
<b>Penalty Adjustments</b>			<b>(\$133,120)</b>
<b>Penalty =</b>			<b>\$13,580</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>	Additional factors decrease combined with ability to pay calculation to show correct final penalty amount.