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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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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: Steven Harry  
Wimmer's Trailer Court  
804 Clover Dew Dairy Rd.  
Princeton, WV 24740

DATE: September 20, 2011

ORDER NO.: 7182

**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 Steven Harry/Wimmer's Trailer Court (hereinafter, "Mr. Harry").

**FINDINGS OF FACT**

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

**Pond #1**

1. Mr. Harry operates a sewage treatment facility referred to as Wimmer's Trailer Court located near Princeton, Mercer County, West Virginia. Mr. Harry was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG550204 on August 30, 2004. Permit coverage has been administratively extended until January 13, 2011.
2. On January 29, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, the following violations of the terms and conditions of Mr. Harry's WV/NPDES permit were observed and documented:
  - a. Chlorine tablets in the disinfection system are not present (Section F.1.).
  - b. Permittee not meeting limits for Fecal Coliform, Dissolved Oxygen, BOD, and Ammonia Nitrogen (Section A.3.).

Promoting a healthy environment.

- c. No sulfur dioxide tablets in the dechlorination unit (F.1.).

As a result of the aforementioned violations, Notice of Violation No. I-10-28-1/29-MDP-2 was issued to Mr. Harry.

3. On December 15, 2010, WVDEP personnel conducted a review of the facility's files from the time period of January 2009-September 2010. During this review, the following violations of the terms and conditions of Mr. Harry's WV/NPDES permit were observed:
  - a. Twenty-two (22) exceedances of Mr. Harry's permit parameters were observed and documented (See Table 1). Each exceedance is a violation of the terms and conditions of Mr. Harry's WV/NPDES permit (Section A.3.). These exceedances can be further defined as:
    - i. Minor violations-9
    - ii. Moderate violations-9
    - iii. Major violations-4
4. A meeting to discuss the terms of this Order was held between WVDEP and Mr. Harry on January 24, 2011. Subsequent to the meeting, Mr. Harry submitted financial documentation for the evaluation of its ability to pay a civil administrative penalty. Based on the financial information provided, Mr. Harry has the ability to pay the civil administrative penalty included in this Order.
5. On July 13, 2011, Mr. Harry transferred its permit to Wimmer Properties, LLC.

### **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. Because of Mr. Harry's permit violations, Mr. Harry shall be assessed a civil administrative penalty of eight thousand five hundred thirty dollars (\$8,530) 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 \$710.83 due on or before December 1, 2011.

Payment 2 in the amount of \$710.83 due on or before January 1, 2012.

Payment 3 in the amount of \$710.83 due on or before February 1, 2012.

Payment 4 in the amount of \$710.83 due on or before March 1, 2012.

Payment 5 in the amount of \$710.83 due on or before April 1, 2012.

Payment 6 in the amount of \$710.83 due on or before May 1, 2012.

Payment 7 in the amount of \$710.83 due on or before June 1, 2012.

Payment 8 in the amount of \$710.83 due on or before July 1, 2012.

Payment 9 in the amount of \$710.83 due on or before August 1, 2012.

Payment 10 in the amount of \$710.83 due on or before September 1, 2012.

Payment 11 in the amount of \$710.83 due on or before October 1, 2012.

Payment 12 in the amount of \$710.87 due on or before November 1, 2012.

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

  
Steven Harry  
Wimmer's Trailer Court

10/11/11  
Date

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

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

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

\_\_\_\_\_  
Date