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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  
Phone: (304) 926-0470  
Fax: (304) 926-0488

Jim Justice, Governor  
Austin Caperton, 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: Town of Pine Grove  
Attn: Honorable Barbara King, Mayor  
PO Box 286  
Pine Grove, WV 26419

DATE: August 2, 2017

ORDER NO.: 8650

**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 Town of Pine Grove (hereinafter "Pine Grove").

**FINDINGS OF FACT**

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

1. Pine Grove operates a 0.082 million gallons per day (MGD) combined sewage collection and treatment system for the direct discharge of treated wastewater via Outlet No. 001 to Fishing Creek in Pine Grove, Wetzel County, West Virginia. Pine Grove was reissued WV/NPDES Water Pollution Control Permit No. WV0084433 on March 26, 2013.
2. On March 26, 2013, West Virginia Department of Environmental Protection (WVDEP) issued Order No. 7797 to Pine Grove, which required submission of a Plan of Action on or before July 1, 2013. The Plan should have included provisions for obtaining compliance with the interim and final effluent limitations for copper, lead, and zinc at Outlet No. 001.
3. On October 20, 2016, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Pine Grove's WV/NPDES permit were observed and documented:
  - a. Section A.001-Exceedances of Pine Grove's permit parameters were observed and documented.

Promoting a healthy environment.

- b. Section B-The permittee failed to meet all of the requirements for the schedule of compliance, including submission of a Plan of Action on or before August 1, 2013, submission of four (4) quarterly progress reports between December 1, 2013 and December 1, 2014, and achievement of compliance with final effluent limitations for copper and zinc at Outlet 001 on or before May 1, 2015.
- c. Section C.21-The permittee failed to perform a daily inspection of the ultraviolet disinfection facilities, which includes maintaining a written log.
- d. Section C.22-The permittee failed to implement a program to identify and eliminate sources of inflow and infiltration.
- e. Section C.22-The permittee failed to submit semi-annual progress reports as an attachment to the Discharge Monitoring Report.
- f. Appendix A.II.1-The permittee failed to properly operate and maintain the facility. Specifically, excessive amounts of solids were in the lift station wet well adjacent to the treatment facility and behind both clarifier influent baffles; floatable solids were in both final clarifiers due to improperly functioning skimmers; fourteen (14) of the twenty-four (24) ultraviolet bulbs in the disinfection system were not functioning; and a malfunction in the vacuum collection system along Alley Addition contributed to three (3) sanitary sewer overflows of vacuum pits at that location.
- g. Appendix A.III.6-The permittee failed to retain calibration and maintenance records for the treatment facility and collection system operations for a period of at least three (3) years.
- h. Appendix A.IV.2-The permittee failed to report any noncompliance which may endanger health or the environment immediately after becoming aware of the circumstances by using the designated spill alert telephone number. Specifically, Pine Grove failed to make proper notification of sanitary sewer overflows on the following dates in 2016: July 18, September 27, October 3, October 6, and October 20.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W16-52-002-SMC was issued to Pine Grove.

- 4. On December 3, 2016, WVDEP personnel conducted a review of facility records from the time period of November 1, 2014 through October 31, 2016. During this review, the following violations of the terms and conditions of Pine Grove's WV/NPDES permit were observed:
  - a. Section A.001 – Forty-eight (48) exceedances of Pine Grove's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
    - i. Minor violations-eleven (11)
    - ii. Moderate violations-thirty-two (32)
    - iii. Major violations-five (5)
- 5. On March 21, 2017, WVDEP personnel met with representatives from Pine Grove to discuss the terms and conditions of the Order.

6. On April 18, 2017, Pine Grove submitted financial documents to WVDEP. This information was used to perform an economic analysis to evaluate Pine Grove's 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. Pine Grove shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, Pine Grove shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Pine Grove will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0084433 and Order No. 8650. The plan of corrective action 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. Because of Pine Grove's permit violations, Pine Grove shall be assessed a civil administrative penalty of thirteen thousand dollars (\$13,000) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following payment schedule:

Payment 1 in the amount of \$1083.33 due on or before July 1, 2017.  
Payment 2 in the amount of \$1083.33 due on or before August 1, 2017.  
Payment 3 in the amount of \$1083.33 due on or before September 1, 2017.  
Payment 4 in the amount of \$1083.33 due on or before October 1, 2017.  
Payment 5 in the amount of \$1083.33 due on or before November 1, 2017.  
Payment 6 in the amount of \$1083.33 due on or before December 1, 2017.  
Payment 7 in the amount of \$1083.33 due on or before January 1, 2018.  
Payment 8 in the amount of \$1083.33 due on or before February 1, 2018.  
Payment 9 in the amount of \$1083.33 due on or before March 1, 2018.  
Payment 10 in the amount of \$1083.33 due on or before April 1, 2018.  
Payment 11 in the amount of \$1083.33 due on or before May 1, 2018.  
Payment 12 in the amount of \$1083.37 due on or before June 1, 2018.

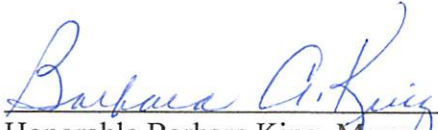
Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. Payment shall include a reference to the Order No. and shall be mailed to:

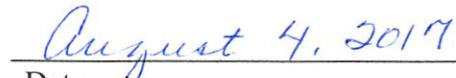
**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

**OTHER PROVISIONS**

1. Pine Grove 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, Pine Grove 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, Pine Grove 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 Pine Grove 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, Pine Grove 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 Pine Grove becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Pine Grove 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 Pine Grove 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 Pine Grove (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 Pine Grove 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 Pine Grove 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 Pine Grove, its successors and assigns.
7. This Order shall terminate upon Pine Grove's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
\_\_\_\_\_  
Honorable Barbara King, Mayor  
Town of Pine Grove

  
\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date



Table One: Town of Pine Grove DMR Exceedance Summary

WV0084433 AVG MONTHLY DMR Exceedances 11/14 - 10/16						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
12/31/2014	Total Recoverable Zn	mg/l	0.067	0.1230	84%	-	X	-
1/31/2015	Total Recoverable Zn	mg/l	0.067	0.0690	3%	X	-	-
2/28/2015	Total Recoverable Zn	mg/l	0.067	0.0710	6%	X		
5/31/2015	Total Recoverable Zn	mg/l	0.039	0.0840	115%	-	X	-
6/30/2015	Total Recoverable Zn	mg/l	0.039	0.1390	256%	-	X	-
7/31/2015	Total Recoverable Zn	mg/l	0.039	0.0970	149%	-	X	-
8/31/2015	Total Recoverable Zn	mg/l	0.039	0.0470	21%	X	-	-
9/30/2015	Total Recoverable Zn	mg/l	0.039	0.1520	290%	-	X	-
10/31/2015	Total Recoverable Zn	mg/l	0.039	0.0820	110%	-	X	-
11/30/2015	Total Recoverable Zn	mg/l	0.039	0.0690	77%	-	X	-
12/31/2015	Total Recoverable Zn	mg/l	0.039	0.0400	3%	X	-	-
1/31/2016	Total Recoverable Zn	mg/l	0.039	0.0850	118%	-	X	-
2/29/2016	Total Recoverable Zn	mg/l	0.039	0.0850	118%	-	X	-
3/31/2016	Total Recoverable Zn	mg/l	0.039	0.1040	167%	-	X	-
4/30/2016	Total Recoverable Zn	mg/l	0.039	0.1510	287%	-	X	-
5/31/2016	Total Recoverable Zn	mg/l	0.039	0.1990	410%	-	-	X
6/30/2016	Total Recoverable Zn	mg/l	0.039	0.1310	236%	-	X	-
7/31/2016	Total Recoverable Zn	mg/l	0.039	0.0850	118%	-	X	-
8/31/2016	Total Recoverable Zn	mg/l	0.039	0.0690	77%	-	X	-
9/30/2016	Total Recoverable Zn	mg/l	0.039	0.0700	79%	-	X	-
10/31/2016	Total Recoverable Zn	mg/l	0.039	0.0760	95%	-	X	-
05/31/2015	Total Recoverable Cu	mg/l	0.006	0.0110	83%	-	X	-
6/30/2015	Total Recoverable Cu	mg/l	0.006	0.0140	133%	-	X	-
7/31/2015	Total Recoverable Cu	mg/l	0.006	0.0110	83%	-	X	-
8/31/2016	Total Recoverable Cu	mg/l	0.006	0.0095	58%	-	X	-
9/30/2015	Total Recoverable Cu	mg/l	0.006	0.0140	133%	-	X	-
10/31/2015	Total Recoverable Cu	mg/l	0.006	0.0140	133%	-	X	-
11/30/2015	Total Recoverable Cu	mg/l	0.006	0.0110	83%	-	X	-
1/31/2016	Total Recoverable Cu	mg/l	0.006	0.0390	550%	-	-	X
2/29/2016	Total Recoverable Cu	mg/l	0.006	0.0390	550%	-	-	X
3/31/2016	Total Recoverable Cu	mg/l	0.006	0.0110	83%	-	X	-
4/30/2016	Total Recoverable Cu	mg/l	0.006	0.0350	483%	-	-	X
5/31/2016	Total Recoverable Cu	mg/l	0.006	0.0510	750%	-	-	X
6/30/2016	Total Recoverable Cu	mg/l	0.006	0.0103	72%	-	X	-
7/31/2016	Total Recoverable Cu	mg/l	0.006	0.0150	150%	-	X	-
8/31/2016	Total Recoverable Cu	mg/l	0.006	0.0190	217%	-	X	-
9/30/2016	Total Recoverable Cu	mg/l	0.006	0.0100	67%	-	X	-



Table One: Town of Pine Grove DMR Exceedance Summary

WV0084433 MAX DAILY DMR Exceedances 11/14 - 10/16						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
6/30/2015	Total Recoverable Zn	mg/l	0.120	0.1400	17%	X	-	-
9/30/2015	Total Recoverable Zn	mg/l	0.120	0.1520	27%	X	-	-
4/30/2016	Total Recoverable Zn	mg/l	0.120	0.1510	26%	X	-	-
5/31/2016	Total Recoverable Zn	mg/l	0.120	0.1990	66%	X	-	-
6/30/2016	Total Recoverable Zn	mg/l	0.120	0.1310	9%	X	-	-
1/31/2016	Total Recoverable Cu	mg/l	0.014	0.0390	179%	-	X	-
2/29/2016	Total Recoverable Cu	mg/l	0.014	0.0390	179%	-	X	-
4/30/2016	Total Recoverable Cu	mg/l	0.014	0.0350	150%	-	X	-
5/31/2016	Total Recoverable Cu	ug/l	0.014	0.0510	264%	-	X	-
7/31/2016	Total Recoverable Cu	ug/l	0.014	0.0150	7%	X	-	-
8/31/2016	Total Recoverable Cu	ug/l	0.014	0.0190	36%	X	-	-

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		11	32	5



Photo # DSCF8967 – Plant lift station wet well



Photo # 8987 – Solids buildup/vegetation growth behind the scum baffle of clarifier No. Two (2)





Photo # DSCF8988 – Floatable solids and scum buildup in clarifier No. One (1)



Photo # DSCF9025 – Sanitary Sewer Overflow from a vacuum pit located along Alley Addition



## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Town of Pine Grove

Receiving Stream:

Treatment System Design Maximum Flow: 0.082 MGD

Treatment System Actual Average Flow: 0.0475 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			3b	3c	3d	3e	3f	3g	3h	4ai	4aii	4aiii		
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1		
b)	Toxicity of Pollutant	0 to 3	0	1	1	0	1	0	0	1	1	1		
c)	Sensitivity of the Environment	0 to 3	0	1	1	0	1	0	0	1	1	1		
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1	1	1		
e)	Actual Exposure and Effects thereon	0 to 3	0	1	1	0	1	0	0	1	1	1		
	<b>Average Potential for Harm Factor</b>		0.4	1	1	0.4	1	0.4	0.4	1	1	1	No	No
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>												
	Degree of Non-Compliance	1 to 3	3	3	3	3	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  $\leq 40\%$  for Avg. Monthly or  $\leq 100\%$  for Daily Max., exceed numeric WQ standard by  $\leq 100\%$ , or report doesn't contain some minor information.**Moderate** = exceedance of permit limit by  $\geq 41\%$  and  $\leq 300\%$  for Avg. Monthly,  $\geq 101\%$  and  $\leq 600\%$  for Daily Max., exceed numeric WQ standard by  $\geq 101\%$  and  $\leq 600\%$  or report doesn't fully address intended subject matter.**Major** = exceedance of permit limit by  $\geq 301\%$  for Avg. Monthly,  $\geq 601\%$  for Daily Max., exceed numeric WQ standard by  $\geq 601\%$ , 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.

**Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.**

[illegible]



		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
3b	Minor	Major	\$1,700	5	\$8,500
3c	Minor	Major	\$2,000	1	\$2,000
3d	Minor	Major	\$2,000	1	\$2,000
3e	Minor	Major	\$1,700	4	\$6,800
3f	Minor	Major	\$2,000	1	\$2,000
3g	Minor	Major	\$1,700	1	\$1,700
3h	Minor	Major	\$1,700	5	\$8,500
4ai	Minor	Minor	\$1,000	11	\$11,000
4aii	Minor	Moderate	\$1,500	32	\$48,000
4aiii	Minor	Major	\$2,000	5	\$10,000
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
<b>Total Base Penalty</b>					<b>\$100,500</b>

## **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		\$10,050
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)		5	(\$5,025)
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - 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		10	(\$10,050)
6.2.b.3 - Cooperation with the Secretary		10	(\$10,050)
6.2.b.5 - Ability to Pay		72.095	(\$72,455)
<b>Penalty Adjustments</b>			<b>(\$87,500)</b>
<b>Penalty =</b>			<b>\$13,000</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> Economic benefit not warranted.	