



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

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: City of Wheeling
Rusty Jebbia, Director of Public Works
PO Box 6348
Wheeling, WV 26003

DATE: May 9, 2011

ORDER NO.: 7003

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 City of Wheeling (hereinafter "Wheeling").

FINDINGS OF FACT

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

1. Wheeling operates a Public Owned Treatment Works (POTW) located in Wheeling, Ohio County, West Virginia. Wheeling was issued WV/NPDES Water Pollution Control Permit No. WV0023230 on June 9, 2006.
2. Liquid Asset Disposal (LAD) is a privately owned specialty wastewater receiving and treatment system in Wheeling, Ohio County, West Virginia which accepts, or previously accepted, a variety of wastewater by tank trucks from sources associated with septage and sewage facilities, storm water from an international airport, wastewater associated with gas well development and production, and other wastestreams from other activities.
3. LAD is recognized by Wheeling as a Significant Industrial User (SIU) and is authorized to discharge into Wheeling's wastewater collection and treatment system by SIU Permit No. 0014 which expired on September 30, 2009 and was administratively extended by Wheeling, on a number of occasions, to March 31, 2010.

Promoting a healthy environment.

4. SIU Permit No. 0014 issued to LAD by Wheeling allows LAD to discharge a maximum daily flow of 200,000 gallons per day, except for a variance of an additional 35,000 gallons per day from April 2, 2008 to January 1, 2009.
5. SIU Permit No. 0014 also limited the acceptance of industrial wastewater from the following: Columbia, People and East Ohio Gas Companies, Alta Corporation, Pittsburgh International Airport, Union Camp "A", American Truck Wash and various fast food restaurants.
6. Although violations noted within this paragraph have been addressed and are not currently occurring or continuing, the information provided herein establishes an historic rationale for the penalty assessed. On November 6, 2008, West Virginia Department of Environmental Protection (WVDEP) issued Order 6568 to Wheeling requiring the following:
 - a. Wheeling shall immediately modify its permit to LAD to include chloride limitations of 9,000 lbs/day maximum daily and 6,000 lbs/day average monthly. Wheeling was further advised to conduct an evaluation to inhibit interference and was permitted to impose limits more stringent than required by this Order.
 - b. Wheeling shall monitor chloride at Outlet 001 once per week and comply with the chloride limitations of 1,238 mg/l average monthly and 2,484 mg/l maximum daily.
 - c. Within ninety (90) days, Wheeling shall submit a permit modification application to the WVDEP to incorporate a local limit for chlorides.
 - d. Wheeling shall use a new DMR for the remainder of its WV/NPDES permit. Wheeling implemented this requirement.

Wheeling did not appeal the conditions of Order 6568.

7. From chloride sampling data submitted by Wheeling and collected by Wheeling (denoted in red) and LAD (denoted in black) (refer to Table 1), LAD exceeded its 9,000 pound daily chloride limitation fifty (50) times from January 8, 2009 to February 4, 2010, a violation of the terms and conditions of Order 6568, a violation of the Code of West Virginia, Chapter 22, Article 11, Section 1 et seq. (§22-11-1 et seq.).
8. By correspondence dated February 3, 2009 from Wheeling to WVDEP, Wheeling submitted a proposed timeline and requested an extension to submit a permit modification application to incorporate a local limit for chlorides as required by Order 6568.
9. On April 21-22, 2009, WVDEP conducted a sampling inspection at LAD and determined LAD had failed to comply with Wheeling's SIU permit. Specifically, WVDEP identified and sampled industrial wastewater from tank trucks hauling wastewater associated with Marcellus shale drilling activity and discovered several violations. To date, Wheeling has failed to enforce the terms and conditions of its Industrial User Permit Program.

10. On or about July 21, 2009, a plant upset began to develop at the Wheeling POTW which required several weeks of vigilant action necessary to recover, including the introduction of "seed" sludge from a neighboring POTW.
11. On August 4, 2009, WVDEP personnel conducted a Pretreatment Compliance Inspection (PCI) at Wheeling and determined several deficiencies.
12. Although violations noted within this paragraph have been addressed and are not currently occurring or continuing, the information provided herein establishes an historic rationale for the penalty assessed. On August 11, 2009, WVDEP issued Order 6568, Amendment Number 1 to Wheeling requiring the following:
 - a. Wheeling shall conduct a head-works analysis and establish a Maximum Allowable Headworks Loading (MAHL) for the pollutants of concern listed in the findings of fact. If the actual loading of any of the pollutant is more than 20% of the MAHL, a local limit must be developed for the pollutant and adopted. Wheeling must also develop a local limit for all pollutants that may cause interference, inhibition, or pass through at the POTW. Wheeling contracted KLH Engineers to conduct this study and provide recommended Maximum Allowable Industrial Loads (MAIL) for chlorides only. To date, the loading study for the additional pollutants of concern has not been conducted, a violation of the terms and conditions of Order 6568 Amendment Number 1 (a violation of §22-11-1 et seq.).
 - b. Oil and gas related wastewaters shall not be introduced or connected into a combined sewer at a point where there are combined sewer overflows between the introduction/connection point and the headworks. Wheeling has a total of four points in the collection system identified as combined sewer overflows between LAD and the POTW. Two, identified as W16 and W18, are located in such a manner that an overflow from either point is extremely unlikely due to its configuration and construction. The remaining two, identified as W1R and O10R/002, are located between LAD and the POTW headworks and capable of discharging a percentage of LAD wastewater into the receiving stream. All are violations of the terms and conditions of Order 6568, Amendment Number 1 (a violation of §22-11-1 et seq.), and its WV/NPDES permit.
 - c. Wheeling shall conduct a thorough testing on the nondomestic wastewater to determine if it is permissible and does not cause a fire or explosion hazard. On or before September 15, 2009, Wheeling shall modify its permit to LAD to require regular closed cap flashpoint testing and to impose a minimum flashpoint limitation of 140 degrees Fahrenheit. To date, Wheeling has failed to implement this requirement, a violation of the terms and conditions of Order 6568, Amendment Number 1 (a violation of §22-11-1 et seq.).
 - d. Due to the nature of the organic pollutants present in the nondomestic wastewater, Wheeling shall evaluate, on or before January 31, 2010, the necessity of establishing limits to be protective of workers. To date, Wheeling has failed to implement this

requirement, a violation of the terms and conditions of Order 6568, Amendment Number 1 (a violation of §22-11-1 et seq.).

- e. Wheeling shall take measures to ensure that the acceptance of LAD wastewater during wet weather does not lead to increased wet weather discharges from CSOs.
- f. Wheeling shall determine, on or before January 31, 2010, if the wastewater is a hazardous waste. To date, Wheeling has failed to implement this requirement, a violation of the terms and conditions of Order 6568, Amendment Number 1 (a violation of §22-11-1 et seq.).
- g. Wheeling shall coordinate with the Nuclear Regulatory Commission and/or WV Department of Health on or before January 31, 2010 to determine what approvals might be necessary to accept Technology Enhanced Naturally Occurring Radioactive Materials (TENORM).
- h. Wheeling shall begin monthly composite (when permissible by method) monitoring for the pollutants listed in the Order at the discharge from Outlet 001 on or before September 2009.
- i. Extended the deadline to January 31, 2010 for submittal of a permit modification application to the WVDEP to incorporate a local limit for chlorides.
- j. Wheeling shall continue to evaluate and determine the cause of the operational issues with its UV disinfection system and take corrective actions before January 31, 2010.

Wheeling did not appeal the conditions of Order 6568, Amendment No. 1.

13. Although violations noted within this paragraph have been addressed and are not currently occurring or continuing, the information provided herein establishes an historic rationale for the penalty assessed. On August 21, 2009, a meeting between Wheeling and LAD was held. A copy of minutes recorded at the meeting revealed:

- a. Wheeling admits that it is taking oil and gas wastewater “well above the 1% that is allowed”.
- b. Wheeling expressed concerned about the lack of diversity in microorganisms and that the plant was essentially dead.
- c. Wheeling acknowledged that the LAD discharge killed the plant.
- d. Wheeling acknowledged statements from employees about uncharacteristic strong offensive odors causing breathing difficulty and light headedness.
- e. Wheeling acknowledged that the UV system was previously working but are now utilizing chlorination for disinfection and are experiencing an abnormally high chlorine demand.
- f. Wheeling acknowledged that LAD has been in violation of Wheeling’s SIU Permit No. 0014 as amended by Order 6568.
- g. Wheeling acknowledged that it had received a large volume of black solids from LAD since July.

20. By correspondence dated November 20, 2009 from Wheeling to LAD, Wheeling extended SIU Permit No. 0014 to LAD until January 31, 2010. Further, the correspondence stated that the discharge limits may be affected by a wastewater treatment plant headwork's analysis that Wheeling had recently received and that the Wheeling pretreatment coordinator would communicate any details of required changes to LAD as soon as possible.
21. By correspondence dated December 1, 2009 from WVDEP to Wheeling, Wheeling was notified that USEPA rules for pretreatment program had been adopted by WVDEP and Wheeling must implement the same into its regulatory program. Wheeling was further advised to submit a permit modification on or before June 1, 2010.
22. On January 21, 2010, during routine activities in the vicinity of Wheeling's Outlet 001, WVDEP discovered "Conditions Not Allowable", a significant amount of crispy white foam floating on the Ohio River emanating from and downstream of Wheeling's Outlet 001, a violation of 47CSR2-3. Notice of Violation No. NW-EAD-012110-001 was issued.
23. On January 21-22, 2010, WVDEP conducted a reconnaissance inspection at Wheeling and documented several deficiencies.
 - a. Wheeling failed to comply with all of the terms and conditions of Order 6568 and subsequent Addendum Number 1 (a violation of §22-11-1 et seq.).
 - b. The discharge from Wheeling was turbid and causing a crispy white foam in the receiving stream, a violation of 47CSR2-3.
 - c. Wheeling failed to operate the defoamer unit, a violation of its WV/NPDES permit (Appendix A.II.1).
 - d. Wheeling was experiencing operational interference, inefficiency, or possible upset as diagnosed by several indicators including sagging dissolved oxygen, loss of effluent clarity, ultra-violet disinfection failures and suspicious odors, all of which have previously been identified by Wheeling during upset conditions in July 2009.
 - e. Wheeling affirmed that it had experienced a "pass-through" of a pink color after it was noted by WVDEP that the foam present in the effluent channels had a pink color, a violation of 47CSR10-14. The pink coloring was attributed by Wheeling to a confirmed "red" effluent coming from LAD on January 20, 2010.
 - f. Wheeling failed to report an unlawful discharge of red color, a violation of 47CSR11-2.
 - g. Wheeling has failed to enforce its Industrial User Permitting authority.
24. By correspondence dated January 26, 2010 from Wheeling to LAD, Wheeling extended SIU Permit No. 0014 to LAD until March 31, 2010. Further, the correspondence stated that the discharge limits may be affected by a wastewater treatment plant headwork's analysis that Wheeling had recently received and that the Wheeling pretreatment coordinator would communicate any details of required changes to LAD as soon as possible.

25. A review of Wheeling's Discharge Monitoring Reports for 2008 and 2009 revealed eighteen (18) excursions (refer to Table 2).
26. To date, Wheeling has not enforced SIU Permit No. 0014 issued to LAD.
27. On March 1, 2010, WVDEP received Wheeling's annual pretreatment implementation activities report for January 1 thru December 31, 2009. Upon review of the annual report, WVDEP personnel determined that it revealed the following violations:
 - a) Wheeling granted administrative extensions of SIU permits for LAD, Swisher International, Allied Waste and North Park Landfill, all violations of its WV/NPDES permit (Section E.4.a).
 - b) The annual report did not include: copy(ies) of the publication(s) of the SIU's in significant non-compliance (SNC), as required by its WV/NPDES permit (Section E.4.d); did not include a description of timely and appropriate enforcement action taken by Wheeling to address LAD's SNC of its chlorides limitation, a requirement of its WV/NPDES permit (Section E.4.e); and, did not provide a summary of violations regarding LAD's significant non-compliance of its chlorides limitation, a requirement of its WV/NPDES permit (Section E.6.d); all are violations of its WV/NPDES permit (Section E.6.d).
28. On May 6, 2010, Wheeling representatives met with WVDEP personnel to discuss the draft Order. Wheeling submitted information for WVDEP's consideration, including a request to have its ability to pay a civil administrative penalty evaluated. Subsequent to the meeting, Wheeling submitted additional financial information related to that request. Upon review, in accordance with USEPA economic models, it was determined that Wheeling has a reduced ability.
29. Wheeling's additional information indicated that it was no longer accepting oil and gas wastewater into its system. The other information submitted by Wheeling warranted no additional changes to the draft Order.

Table 1

Date	Chloride #/day
1/8/2009	16,071
1/23/2009	17,247
1/29/2009	21,559
<i>2/6/2009</i>	<i>30,525</i>
2/6/2009	39,189
<i>2/10/2009</i>	<i>15,914</i>
2/10/2009	18,423
<i>2/11/2009</i>	<i>22,833</i>
<i>2/12/2009</i>	<i>18,037</i>
2/12/2009	21,559
<i>2/19/2009</i>	<i>15,835</i>
2/19/2009	17,639
3/4/2009	105,834
3/12/2009	70,556
3/19/2009	97,995
3/27/2009	43,118
<i>3/31/2009</i>	<i>28,847</i>
4/1/2009	31,384
<i>4/1/2009</i>	<i>32,111</i>
<i>4/2/2009</i>	<i>24,331</i>
<i>4/3/2009</i>	<i>5,744</i>
<i>4/4/2009</i>	<i>22,601</i>
<i>4/5/2009</i>	<i>43,564</i>
4/8/2009	39,198
<i>4/8/2009</i>	<i>20,215</i>
<i>4/9/2009</i>	<i>36,118</i>
<i>4/10/2009</i>	<i>29,627</i>
<i>4/11/2009</i>	<i>20,435</i>
<i>4/12/2009</i>	<i>205</i>
4/17/2009	54,877
4/23/2009	31,384
4/30/2009	35,278
5/7/2009	11,367
5/14/2009	39,198
5/21/2009	23,519
5/27/2009	35,278
<i>5/27/2009</i>	<i>36,033</i>
6/4/2009	25,479

Date	Chloride #/day
6/12/2009	31,358
6/18/2009	33,318
<i>6/18/2009</i>	<i>27,205</i>
6/25/2009	50,957
7/2/2009	17,639
<i>7/2/2009</i>	<i>15,973</i>
7/10/2009	35,278
7/16/2009	39,198
7/23/2009	48,998
8/6/2009	25,479
8/14/2009	27,439
8/18/2009	23,519
<i>8/18/2009</i>	<i>17,564</i>
<i>8/25/2009</i>	<i>1,673</i>
8/27/2009	194
<i>8/27/2009</i>	<i>966</i>
<i>8/28/2009</i>	<i>3232</i>
9/1/2009	550
<i>9/1/2009</i>	<i>406</i>
9/2/2009	314
<i>9/2/2009</i>	<i>417</i>
<i>9/3/2009</i>	<i>1014</i>
<i>9/4/2009</i>	<i>111</i>
<i>9/5/2009</i>	<i>191</i>
<i>9/6/2009</i>	<i>179</i>
<i>9/9/2009</i>	<i>1307</i>
9/10/2009	4560
<i>9/10/2009</i>	<i>6071</i>
9/11/2009	352
<i>9/11/2009</i>	<i>501</i>
9/17/2009	1763
9/18/2009	780
<i>9/18/2009</i>	<i>1388</i>
9/24/2009	1949
<i>9/24/2009</i>	<i>2308</i>
9/25/2009	2565
<i>9/25/2009</i>	<i>4074</i>
9/29/2009	8119

Table 1
(continued)

Date	Chloride #/day
9/29/2009	4638
9/30/2009	4636
9/30/2009	5801
10/10/2009	1849
10/1/2009	282
10/2/2009	4837
10/2/2009	6699
10/6/2009	925
10/6/2009	11,909
10/7/2009	5,104
10/7/2009	4521
10/8/2009	3337
10/8/2009	3622
10/9/2009	6633
10/9/2009	7467
10/14/2009	6179
10/14/2009	4543
10/15/2009	5735
10/16/2009	4035
10/23/2009	377
10/30/2009	20
11/18/2009	722
11/19/2009	849
12/4/2009	829
12/8/2009	532
12/16/2009	468
12/23/2009	1800
12/29/2009	590
1/7/2010	793
1/9/2010	276
1/10/2010	238
1/13/2010	541
1/14/2010	1464
1/15/2010	459
1/16/2010	439
1/17/2010	289
1/19/2010	526
1/20/2010	608

Date	Chloride #/day
1/21/2010	3256
1/22/2010	1057
1/23/2010	1792
1/24/2010	96
1/26/2010	1127
1/27/2010	353
1/28/2010	742
1/29/2010	270
1/30/2010	1990
1/31/2010	1058
2/1/2010	371
2/2/2010	2326
2/3/2010	3211
2/4/2010	1384

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. Wheeling shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Administrative Order No. 6568 and Amendment No. 1 to Order No. 6568 are hereby rescinded as of the effective date of this Order.
3. Within thirty (30) days of entry of this Order, Wheeling shall submit for approval a proposed corrective action plan and schedule, outlining action items and completion dates for how and when Wheeling will achieve compliance with all terms and conditions of the permit and/or pertinent laws and rules. The corrective action plan shall be submitted to:

**Environmental Inspector Supervisor
NW 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 57th 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.

4. Upon entry of this Order, Wheeling shall continue to cease and desist acceptance of all oil and gas wastewater. Once Wheeling has made sufficient improvements in its pretreatment program to properly regulate this waste stream, Wheeling may petition the WVDEP, in writing, to accept this waste stream. Wheeling shall not accept this waste stream at its facility until it receives written authorization from WVDEP.
5. Upon entry of this Order, Wheeling shall begin daily monitoring for chlorides at LAD by grab sample. Analytical results shall be maintained at the Wheeling POTW and available for review by WVDEP personnel upon request. Daily monitoring for chlorides shall continue until the continuous conductivity monitoring device described in Item No. 6 of this Order for Compliance is installed, calibrated and operating for a period sufficient for Wheeling to determine a correlation between the chlorides level and the conductivity.

Wheeling shall continue the daily monitoring of chlorides for a minimum of thirty (30) days from installation, calibration and operation of the continuous conductivity monitoring device.

6. Within ninety (90) days of entry of this Order, Wheeling shall have installed a continuous conductivity monitoring and recording device at LAD to detect unlawful dumping or disposal of chloride saturated water.
7. Upon entry of this Order, Wheeling shall immediately initiate updating its Pretreatment Permitting strategy and management and identify all authorized users and sources.
8. Upon entry of this Order, Wheeling shall immediately maintain a daily log to document all pass through, interference and unauthorized spills. This log shall be maintained at the wastewater treatment plant and be available for review by WVDEP personnel upon request. The daily log shall reflect not only the date, time and description of incident, but also Wheeling's notification in accordance with 47CSR11-2.
9. Within forty-five (45) days of entry of this Order, Wheeling shall complete all necessary repairs to the UV disinfection unit and return it to service.
10. Upon entry of this Order, Wheeling shall return the defoamer unit to service and maintain its continuous operation, as necessary. Wheeling shall make no less than two visual observations per day of the effluent to determine foam control effectiveness and report all observations in a log book to be maintained at the wastewater treatment plant and be available for review by WVDEP personnel upon request.
11. Should the defoamer unit prove to be ineffective in controlling the foam at the discharge, Wheeling shall pursue either an alternative or simultaneous method of controlling the foam.
12. Because of Wheeling's Legislative Rule and permit violations, Wheeling shall be assessed a civil administrative penalty of fifty-nine thousand one hundred seventy dollars (\$59,170) 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 \$9,861 due on or before December 1, 2011.

Payment 2 in the amount of \$9,861 due on or before January 1, 2012.

Payment 3 in the amount of \$9,861 due on or before February 1, 2012.

Payment 4 in the amount of \$9,861 due on or before March 1, 2012.

Payment 5 in the amount of \$9,861 due on or before April 1, 2012.

Payment 6 in the amount of \$9,865 due on or before May 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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

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



City of Wheeling

9-19-11

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date