



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: Steven Clisso
Fink's Cafeteria
Rt. 2 Box 186
Princeton, WV 24740

DATE: December 6, 2011

ORDER NO.: 7184

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 Clisso/Fink's Cafeteria (hereinafter, "Clisso").

FINDINGS OF FACT

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

1. Clisso operates a sewage treatment facility at Fink's Cafeteria, located near Princeton, Mercer County, West Virginia. Clisso was issued WV/NPDES Water Pollution Control Permit No. WV0103110, General Permit Registration No. WVG550517 on September 6, 2004, administratively extended to 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 Clisso's WV/NPDES permit were observed and documented:
 - a. No chlorine tablets in the disinfection system. No sulfur dioxide tablets in the dechlorination unit (Section F.1.).

As a result of the aforementioned violation, Notice of Violation No. I-10-28-1/29-MDP-4 was issued to Clisso.

Promoting a healthy environment.

3. On December 13, 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 Clisso's WV/NPDES permit were observed:
 - a. Eighteen (18) exceedances of Clisso's permit parameters were observed and documented (See Table 1). Each exceedance is a violation of the terms and conditions of Clisso's WV/NPDES permit (Section A.2.). These exceedances can be further defined as:
 - i. Minor violations-5
 - ii. Moderate violations-5
 - iii. Major violations-8
 - b. Permittee failed to submit the required Discharge Monitoring Report (DMR) for 2nd quarter 2009 and 3rd quarter 2010 (Section B.1.).
 - c. Permittee is not utilizing the correct Discharge Monitoring Report (DMR) when reporting sampling results to the agency, and is not sampling, as required, for Total Nitrogen and Total Phosphorus (Section B.1.).
4. On January 28, 2011, WVDEP personnel and representatives of Clisso met to discuss the terms and conditions of this Order.
5. On October 31, 2011, Clisso submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which determined that Clisso has the ability to pay the civil administrative penalty included in this Order.

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. Clisso 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, Clisso shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Clisso will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall be submitted to:

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

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 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 Clisso's permit violations, Clisso shall be assessed a civil administrative penalty of sixteen thousand five hundred seventy dollars (\$16,570) 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 \$1,380.83 due on or before February 1, 2012.

Payment 2 in the amount of \$1,380.83 due on or before March 1, 2012.

Payment 3 in the amount of \$1,380.83 due on or before April 1, 2012.

Payment 4 in the amount of \$1,380.83 due on or before May 1, 2012.

Payment 5 in the amount of \$1,380.83 due on or before June 1, 2012.

Payment 6 in the amount of \$1,380.83 due on or before July 1, 2012.

Payment 7 in the amount of \$1,380.83 due on or before August 1, 2012.

Payment 8 in the amount of \$1,380.83 due on or before September 1, 2012.

Payment 9 in the amount of \$1,380.83 due on or before October 1, 2012.

Payment 10 in the amount of \$1,380.83 due on or before November 1, 2012.

Payment 11 in the amount of \$1,380.83 due on or before December 1, 2012.

Payment 12 in the amount of \$1,380.87 due on or before January 1, 2013.

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. Clisso 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, Clisso 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, Clisso 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 Clisso 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, Clisso 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 Clisso 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 Clisso 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 Clisso (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 Clisso 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 Clisso 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 Clisso, its successors and assigns.

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

Steven Clisso
Fink's Cafeteria

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

revised November 2010