



west virginia department of environmental protection

Division of Water and Waste Management
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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: Pizza Hut of Logan Inc.
Mr. Donnie Hughes, District Manager
PO Box 544
Cumberland Gap, TN 37724

DATE: July 6, 2015

ORDER NO.: 8257

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 Pizza Hut of Logan Inc. (hereinafter "Pizza Hut").

FINDINGS OF FACT

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

1. Pizza Hut operated a sewage treatment facility located in Stollings, Logan County, West Virginia. Pizza Hut was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550259 on December 27, 2010.
2. On September 18, 2014, WVDEP personnel conducted a review of facility records from the time period of 4th Quarter 2012 through 2nd Quarter 2014. During this review, the following violations of the terms and conditions of Pizza Hut's WV/NPDES permit were observed:
 - a. Section A.1 – Sixteen (16) exceedances of Pizza Hut's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations- Five (5)
 - ii. Moderate violations- Seven (7)
 - iii. Major violations- Four (4)

Promoting a healthy environment.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W14-23-081-CJN was issued to Pizza Hut.

3. On January 27, 2015, WVDEP personnel conducted a review of facility records from the time period of 3rd Quarter 2014 through 4th Quarter 2014. During this review, the following violations of the terms and conditions of Pizza Hut's WV/NPDES permit were observed:
 - a. Section A.1 – Three (3) exceedances of Pizza Hut's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-One (1)
 - ii. Major violations-Two (2)
4. A representative of Pizza Hut informed WVDEP personnel that, on October 1, 2014, the wastewater treatment plant was decommissioned. WVDEP personnel subsequently confirmed that Pizza Hut had been connected to the City of Logan's wastewater treatment facility. On January 27, 2015, WVDEP personnel conducted an inspection and determined that the site of the sewage treatment facility had been properly reclaimed after the facility was taken out of service.
5. On May 28, 2015, WVDEP personnel and representatives of Pizza Hut met to discuss the terms and conditions of 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:

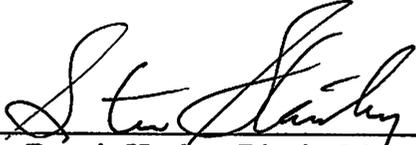
1. Pizza Hut shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Because of Pizza Hut's permit violations, Pizza Hut shall be assessed a civil administrative penalty of two thousand five hundred dollars (\$2,500) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. 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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Pizza Hut 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, Pizza Hut 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, Pizza Hut 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 Pizza Hut 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, Pizza Hut 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 Pizza Hut becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Pizza Hut 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 Pizza Hut 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 Pizza Hut (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 Pizza Hut 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 Pizza Hut 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 Pizza Hut, its successors and assigns.

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



~~Mr. Donnie Hughes, District Manager
Pizza Hut of Logan Inc.~~

*Chief Financial Officer
Treasurer*

7-17-15

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013

RECEIVED

JUL 27 2015

**ENVIRONMENTAL
ENFORCEMENT**

Table One: Pizza Hut of Logan Inc. DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 4th Quarter 2012 through 4th Quarter 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
Dec 2012	Fecal	cnts/100ml	200	6000	2900%	-	-	X
Mar 2013	Fecal	cnts/100ml	200	460	130%	-	X	-
June 2013	BOD	mg/l	30	37	23%	X	-	-
June 2013	Fecal	cnts/100ml	200	371	86%	-	X	-
Mar 2014	TSS	mg/l	30	110	267%	-	X	-
Mar 2014	Fecal	cnts/100ml	200	1200	500%	-	-	X
Mar 2014	BOD	mg/l	30	82	173%	-	X	-
June 2014	TSS	mg/l	30	69	130%	-	X	-
June 2014	BOD	mg/l	30	49	63%	-	X	-
Sept 2014	BOD	mg/l	30	32.5	8%	X	-	-
Sept 2014	Fecal	cnts/100ml	200	1549.19	675%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - 4th Quarter 2012 through 4th Quarter 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
Dec 2012	Fecal	cnts/100ml	400	6000	1400%	-	-	X
Mar 2013	Fecal	cnts/100ml	400	460	15%	X	-	-
June 2013	Fecal	cnts/100ml	400	13800	3350%	-	-	X
Mar 2014	TSS	mg/l	60	110	83%	X	-	-
Mar 2014	Fecal	cnts/100ml	400	1200	200%	-	X	-
Mar 2014	BOD	mg/l	60	82	37%	X	-	-
June 2014	TSS	mg/l	60	69	15%	X	-	-
Sept 2014	Fecal	cnts/100ml	400	6000	1400%	-	-	X

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		6	7	6



1/27/2015- Photo of site where package plant was installed.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Pizza Hut of Logan Inc. Receiving Stream:

Treatment System Design Maximum Flow: 0.0015 MGD

Treatment System Actual Average Flow: 0.000857 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			2ai	2aii	2aiii	3ai	3aii								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	1	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	1	1	1	1	1								
Average Potential for Harm Factor			1	1	1	1	1	No							
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	1	2	3	1	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 -			\$0
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)		50	(\$12,250)
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)		\$4,880	(\$4,880)
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		10	(\$2,450)
6.2.b.5 - Ability to Pay		10	(\$2,450)
Penalty Adjustments			(\$22,000)
Penalty =			\$2,500

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	
Estimated Economic Benefit	\$0
Comments: No economic benefit warranted.	