



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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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
AND THE
SOLID WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 15**

TO: Lackawanna Transport Company
Wetzel County Landfill
Attn: Pasquale Mascaro
2650 Audubon Road
Audubon, PA 19403

DATE: August 12, 2016

ORDER NO.: MM-16-14

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. and Chapter 22, Article 15, Section 1 et seq. to Lackawanna Transport Company (hereinafter "LTC").

FINDINGS OF FACT

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

1. LTC operates a Class B Sanitary Landfill located near New Martinsville, Wetzel County, West Virginia. LTC was reissued WV/NPDES Water Pollution Control Permit No. WV0109185 and WV Solid Waste Facility Permit No. SWF-1021 on September 14, 2009 and September 10, 2015.
2. On September 29, 2014, LTC was issued Order No. MM-15-03 in response to various violations observed and documented at the aforementioned facility on March 11, 2014, April 24, 2014, June 3, 2014, and June 13, 2014.
3. On April 28, 2015, LTC received an informal hearing decision regarding Civil Administrative Penalty (CAP) Case No. 15-0007, which was issued in response to

Promoting a healthy environment.

various violations observed and documented at the aforementioned facility on March 11, 2014, June 3, 2014, and September 24, 2014.

4. On October 14, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted a review of facility records from the time period of September, 2013 through August, 2015. During this review, the following violations of the terms and conditions of LTC's WV/NPDES permit were observed.
 - a. Section A.1 - Forty (40) exceedances of LTC's permit parameters were observed and documented. These exceedances can be further defined as:
 - i. Minor violations-Fifteen (15)
 - ii. Moderate violations-Twenty (20)
 - iii. Major violations-Five (5)
 - b. Section C.12 - Thirty (30) exceedances of LTC's permitted benchmarks for Chlorides were observed and documented. The facility failed to initiate an investigation into the source of the exceedances and submit a corrective action plan to WVDEP that outlines the facility's actions to correct the conditions causing the elevated contamination levels. As documented in correspondence with the facility and in inspection reports, the facility's investigation and response to the exceedances of these benchmarks has been inadequate. These exceedances can be further defined as:
 - i. Minor violations-Four (4)
 - ii. Moderate violations-Eighteen (18)
 - iii. Major violations-Eight (8)

As a result of the aforementioned violations, Notice of Violation (NOV) No. SW-NW-CJJ-093015-002 was issued to LTC.

5. On February 17, 2016, WVDEP personnel conducted a review of facility records from the time period of January, 2014 through December, 2015. During this review, the following violations of the terms and conditions of LTC's WV/NPDES permit were observed.
 - a. Section A.1 – Thirty-five (35) exceedances of LTC's permit parameters were observed and documented (Table One). These exceedances can be further defined as:
 - i. Minor violations-Twelve (12)
 - ii. Moderate violations-Eighteen (18)
 - iii. Major violations-Five (5)
 - b. Section C.12 – Thirty-five (35) exceedances of LTC's permitted benchmarks for Chlorides were observed and documented (Table Two). The facility failed to initiate an investigation into the source of the exceedances and submit a corrective action plan to WVDEP that outlines the facility's actions to correct the conditions causing the elevated contamination levels. As documented in correspondence with the facility and in inspection reports, the facility's investigation and response to the exceedances of these benchmarks has been inadequate. These exceedances can be further defined as:
 - i. Minor violations-Five (5)

- ii. Moderate violations-Twenty-one (21)
 - iii. Major violations-Nine (9)
 - c. Section C.9 – LTC failed to submit August 2015 Discharge Monitoring Reports (DMRs) for Outlet No. 002.
6. On July 26, 2016, WVDEP personnel met with representatives of LTC to discuss the terms and conditions of the Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq., and Chapter 22, Article 15, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. LTC shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of the effective date of this Order, LTC shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when LTC will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0109185 and WV Solid Waste Facility Permit No. SWF-1021 and Order No. MM-16-14. 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. Within sixty (60) days of the effective date of this order, LTC shall conduct an independent third-party investigation to determine the root cause of chlorides in its stormwater. As part of the investigation, LTC shall prepare and provide a written report of its findings to WVDEP.
4. Within sixty (60) days of completion of the aforementioned chlorides investigation, LTC shall develop an approvable plan to reduce chloride sources to achieve benchmark levels. This plan shall be incorporated into the Storm Water Pollution Prevention Plan (SWPPP) and shall include, but not be limited to, the following provisions:
 - a. A method of identifying pollution sources.
 - b. Preventative measures and Best Management Practices (BMPs).
 - c. Process controls to evaluate the effectiveness of BMPs and preventative measures.
 - d. A procedure to modify processes, and/or preventative measures when new sources are identified or if process controls indicate they are ineffective.

The plan of corrective action, chlorides investigation report, and chlorides plan shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

5. Because of LTC's permit violations, LTC shall be assessed a civil administrative penalty of seventy-nine thousand nine hundred dollars (\$79,900) 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 \$13,316.66 due on or before October 1, 2016.

Payment 2 in the amount of \$13,316.66 due on or before November 1, 2016.

Payment 3 in the amount of \$13,316.66 due on or before December 1, 2016.

Payment 4 in the amount of \$13,316.66 due on or before January 1, 2017.

Payment 5 in the amount of \$13,316.66 due on or before February 1, 2017.

Payment 6 in the amount of \$13,316.70 due on or before March 1, 2017.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payments 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. LTC hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21, and/or Chapter 22, Article 15, Section 16 of the Code of West Virginia. Under this Order, LTC 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, LTC 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 LTC 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, LTC 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 LTC becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and LTC 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 LTC 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 LTC (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 LTC 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 LTC 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 LTC, its successors and assigns.
7. This Order shall terminate upon LTC's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Pasquale Mascaro
Lackawanna Transport Company

10/28/16

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

RECEIVED

OCT 31 2016

ENVIRONMENTAL
ENFORCEMENT

Table One: Lackawanna Transport Company DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY -January 2014 through December 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
4-2015	Ave Monthly Flow	MGD	0.08	0.085	6%	X	-	-
3-2015	Ammonia	lbs/day	3.3	3.8	15%	X	-	-
2-2015	Ammonia	lbs/day	3.3	7.6	130%	-	X	-
1-2015	Ammonia	lbs/day	3.3	7.8	136%	-	X	-
12-2014	Ammonia	lbs/day	3.3	24.1	630%	-	-	X
12-2014	Fecal Coliform	cts/100ml	200	208.5	4%	X	-	-
12-2014	Iron	lbs/day	0.8	0.92	15%	X	-	-
11-2014	Ammonia	lbs/day	3.3	9.3	182%	-	X	-
10-2014	Total Susp. Solids	lbs/day	18	26	44%	-	X	-
10-2014	Ammonia	lbs/day	3.3	4.8	45%	-	X	-
10-2014	Iron	lbs/day	0.8	0.91	14%	X	-	-
10-2014	Total Aluminum	lbs/day	0.21	0.33	57%	-	X	-
8-2014	Fecal Coliform	cts/100ml	200	483	142%	-	X	-
4-2014	Ammonia	lbs/day	3.3	5.6	70%	-	X	-
3-2014	Total Susp. Solids	lbs/day	18	31.9	77%	-	X	-
3-2014	Ammonia	lbs/day	3.3	22.1	570%	-	-	X
2-2014	Total Susp. Solids	lbs/day	18	43.3	141%	-	X	-
2-2014	Ammonia	lbs/day	3.3	21.5	552%	-	-	X
1-2014	Total Susp. Solids	lbs/day	18	95.5	431%	-	-	X
1-2014	Ammonia	lbs/day	3.3	21.9	564%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY January 2014 through December 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
3-2015	Ammonia	lbs/day	6.7	7.6	13%	X	-	-
2-2015	Ammonia	lbs/day	6.7	14.11	111%	-	X	-
1-2015	Ammonia	lbs/day	6.7	10.93	63%	X	-	-
12-2014	Ammonia	lbs/day	6.7	26.3	293%	-	X	-
11-2014	Ammonia	lbs/day	6.7	14.4	115%	-	X	-
10-2014	Ammonia	lbs/day	6.7	9.43	41%	X	-	-
10-2014	Iron	lbs/day	1.53	1.751	14%	X	-	-
10-2014	Fecal Coliform	cts/100ml	400	1636	309%	-	X	-
10-2014	Total Aluminum	lbs/day	0.5	0.633	27%	X	-	-
8-2014	Fecal Coliform	cts/100ml	400	1364	241%	-	X	-
4-2014	Ammonia	lbs/day	6.7	10.9	63%	X	-	-
3-2014	Ammonia	lbs/day	6.7	22.7	239%	-	X	-
2-2014	Ammonia	lbs/day	6.7	23.79	255%	-	X	-
1-2014	Total Susp. Solids	lbs/day	58.7	97.5	66%	X	-	-
1-2014	Ammonia	lbs/day	6.7	25.24	277%	-	X	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	12	18	5

Table Two: LTC Benchmark Summary

Outlet 002 DMR Benchmark Concentrations -January 2014 through December 2015						Degree of non-compliance		
Date	Parameter	Units	Benchmark Concentration	Reported Concentration	% Exceedance	Min	Mod	Maj
12-2015	Chlorides	mg/L	34.5	48	39%	X	-	-
11-2015	Chlorides	mg/L	34.5	53.5	55%	-	X	-
10-2015	Chlorides	mg/L	34.5	53	54%	-	X	-
7-2015	Chlorides	mg/L	34.5	39.7	15%	X	-	-
6-2015	Chlorides	mg/L	34.5	40	16%	X	-	-
5-2015	Chlorides	mg/L	34.5	77.8	126%	-	X	-
4-2015	Chlorides	mg/L	34.5	38.2	11%	X	-	-
3-2015	Chlorides	mg/L	34.5	35.9	4%	X	-	-
2-2015	Chlorides	mg/L	34.5	88	155%	-	X	-
1-2015	Chlorides	mg/L	34.5	62.8	82%	-	X	-
12-2014	Chlorides	mg/L	34.5	73.6	113%	-	X	-
5-2014	Chlorides	mg/L	34.5	51.1	48%	-	X	-
4-2014	Chlorides	mg/L	34.5	126	265%	-	X	-
3-2014	Chlorides	mg/L	34.5	182	428%	-	-	X

Outlet 003 DMR Benchmark Concentrations - January 2014 through December 2015						Degree of non-compliance		
Date	Parameter	Units	Benchmark Concentration	Reported Concentration	% Exceedance	Min	Mod	Maj
12-2015	Chlorides	mg/L	34.5	117	239%	-	X	-
11-2015	Chlorides	mg/L	34.5	119	245%	-	X	-
10-2015	Chlorides	mg/L	34.5	177	413%	-	-	X
8-2015	Chlorides	mg/L	34.5	202	486%	-	-	X
7-2015	Chlorides	mg/L	34.5	120	248%	-	X	-
6-2015	Chlorides	mg/L	34.5	110	219%	-	X	-
5-2015	Chlorides	mg/L	34.5	97.8	183%	-	X	-
4-2015	Chlorides	mg/L	34.5	107	210%	-	X	-
3-2015	Chlorides	mg/L	34.5	134	288%	-	X	-
2-2015	Chlorides	mg/L	34.5	205	494%	-	-	X
1-2015	Chlorides	mg/L	34.5	222	543%	-	-	X
12-2014	Chlorides	mg/L	34.5	270	683%	-	-	X
11-2014	Chlorides	mg/L	34.5	186	439%	-	-	X
10-2014	Chlorides	mg/L	34.5	146	323%	-	-	X
8-2014	Chlorides	mg/L	34.5	127	268%	-	X	-
7-2014	Chlorides	mg/L	34.5	102	196%	-	X	-
5-2014	Chlorides	mg/L	34.5	107	210%	-	X	-
4-2014	Chlorides	mg/L	34.5	130	277%	-	X	-
3-2014	Chlorides	mg/L	34.5	50.2	46%	-	X	-
2-2014	Chlorides	mg/L	34.5	162	370%	-	-	X
1-2014	Chlorides	mg/L	34.5	116	236%	-	X	-

Totals	Degree of non-compliance		
	Min	Mod	Maj
	5	21	9

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Lackawanna Transport Company Receiving Stream:

Treatment System Design Maximum Flow: MGD

Treatment System Actual Average Flow: MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#													
			5ai	5aii	5aiii	5b	5c									
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	0									
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	0									
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	0									
Average Potential for Harm Factor			1	1	1	1	0.4	No								
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	1	2	3	3	1									

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 -	20		\$10,280
6.2.b.4 - Compliance/noncompliance history	35		\$17,990
6.2.b.6 - Economic benefits - (flat monetary increase)	\$200		\$200
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)			\$0
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			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$28,500
Penalty =			\$79,900

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$200
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	\$200
Comments: Avoided cost of sampling/submitting August 2015 DMRs for Outlet 002.	