



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**

TO: Lakefront Development Company, LLC
Al Terranova, MGM, Member
The Meadows at Stonecoal Lake
PO Box 5
Horner, WV 26372

DATE: January 17, 2013

ORDER NO.: 7694

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 Lakefront Development Company, LLC (hereinafter, "Lakefront").

FINDINGS OF FACT

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

1. Lakefront operates a wastewater treatment plant located at the Meadows at Stonecoal Lake, near Horner, Lewis County, West Virginia. was issued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG551318, on December 20, 2007.
2. On January 5, 2010, Lakefront was notified by West Virginia Department of Environmental Protection (WVDEP) via certified mail that its WV/NPDES permit was void due to failure to submit annual fees.
3. On February 15, 2011, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the WV State Code and WV Legislative Rule were observed documented:

- a. 22-11-8.b.1 – Lakefront failed to maintain a valid WV/NPDES permit to allow the discharge of treated wastewater from a point source into Stonecoal Creek. It is unlawful for any facility to discharge effluent into waters of the State without authorization pursuant to a WV/NPDES permit.
- b. 47CSR2 Section 3.2.b – Lakefront caused conditions not allowable in State waters by creating a sludge blanket immediately below unpermitted outlet 001.

As a result of the aforementioned violations, Notice of Violations (NOV) Nos. NW-SW-M-021511-01 and NW-SW-M-21511-02 were issued to Lakefront.

4. On May 1, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of WV State Code was observed and documented:
 - a. 22-11-8.b.1 – Lakefront failed to maintain a valid WV/NPDES permit to allow the discharge of treated wastewater from a point source into Stonecoal Creek. It is unlawful for any facility to discharge effluent into waters of the State without authorization pursuant to a WV/NPDES permit.

As a result of the aforementioned violation, Notice of Violation (NOV) No. NW-SW-M-050112-01 was issued to Lakefront.

5. On December 10, 2012, a meeting was held between WVDEP and Lakefront to discuss the terms and conditions of this Order. Lakefront was reissued its WV/NPDES permit on May 29, 2012.

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. Lakefront shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, Lakefront shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Lakefront will achieve compliance with all pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP 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 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 Lakefront's West Virginia Code and Legislative Rule violations, Lakefront shall be assessed a civil administrative penalty of ten thousand one hundred thirty dollars (\$10,130) 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 \$5,065 due on or before June 1, 2013.

Payment 2 in the amount of \$5,065 due on or before September 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. Lakefront 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, Lakefront 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, Lakefront 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 Lakefront 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, Lakefront 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 Lakefront 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 Lakefront 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 Lakefront (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 Lakefront 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 Lakefront 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 Lakefront, its successors and assigns.

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



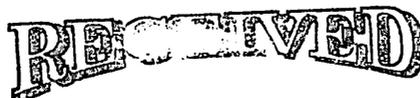
Al Terranova, MGM, Member
Lakefront Development Company, LLC

4-1-13

Date

Public Notice begin:

Date



Public Notice end:

APR 15 2013

Date

ENVIRONMENTAL
ENFORCEMENT

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

Date



02.15.2011 14:20



Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: The Meadows at Stonecoal Lake Receiving Stream: Stonecoal Creek

Treatment System Design Maximum Flow: 0.01 MGD

Treatment System Actual Average Flow: N/D MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			3a	3b	4a									
a)	Amount of Pollutant Released	1 to 3	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	1	1									
c)	Sensitivity of the Environment	0 to 3	1	1	1									
d)	Length of Time	1 to 3	2	1	3									
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1									
Average Potential for Harm Factor			1.2	1	1.4	No								
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	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 <=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		\$2,020
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)			\$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		10	(\$1,010)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,010)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$30
Penalty =			\$10,130

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:	