



west virginia department of environmental protection

Division of Water and Waste Management
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Charleston, WV 25304
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Polymer Alliance Services, LLC
Jeff D'Costa
117 Warehouse Dr.
Washington, WV 26181

DATE: July 24, 2014
ORDER NO.: 7826

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 Polymer Alliance Services, LLC (hereinafter "PAS").

FINDINGS OF FACT

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

1. PAS operates a facility that provides warehousing, grinding and shredding of plastics for recycling located in Parkersburg, Wood County, West Virginia. This facility is referred to as "White Dove" and was issued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG611492, on October 6, 2010. PAS also operates a repackaging, repurposing, and storage facility for the materials mentioned above located in Washington, Wood County, West Virginia. This location is referred to as "Polymer Alliance Services" and was reissued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG611319, on March 24, 2011.
2. On August 14, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of PAS' White Dove facility. The following violations were documented:
 - a. Discharge monitoring reports were not submitted for 2010, 2011, or 2012, a violation of Appendix A.III.2 of the permit.

Promoting a healthy environment.

- b. A sample was obtained on January 26, 2011, which did not include Copper, Lead, Zinc, Aluminum, or Iron as required, a violation of Section A of the permit.
 - c. A sample was also taken on January 27, 2012 for the correct parameters required by the permit; however, zinc exceeded benchmark and there were no revisions to the SWPPP within thirty (30) days, a violation of Section B.17 of the permit.
 - As a result of the aforementioned violations, Notice of Violation No. I12-54-049-GMP, was issued to PAS.
 3. On August 14, 2012, WVDEP personnel conducted an inspection of PAS' Polymer Alliance Services facility. The following violations were documented:
 - a. Discharge monitoring reports were not submitted for 2007 through 2012, a violation of Appendix A.III.2 of the permit.
 - b. Samples were obtained on January 27, 2011 and July 8 2011, which did not include Copper, Lead, Zinc, Aluminum, or Iron as required, a violation of Section A of the permit.
- As a result of the aforementioned violations, Notice of Violation No. I12-54-050-GMP was issued to PAS.
4. On May 13, 2013, September 4, 2013, and September 26, 2013, WVDEP and PAS 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. PAS 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, PAS shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when PAS will achieve compliance with all terms and conditions of its WV/NPDES permit and/or pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
P.O. Box 662
Teays, WV 25569**

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 PAS' WV/NPDES permit violations, PAS shall be assessed a civil administrative penalty of seventeen thousand eight hundred eighty dollars (\$17,880). Thirteen thousand four hundred ten dollars (\$13,410) of the civil administrative penalty shall be held in abeyance for a five (5) year period pending the following:
 - a. Proper submittal of Discharge Monitoring Reports, as required by Appendix A.III.2 of the WV/NPDES permit.
 - b. Proper revision of the SWPPP annually and subsequent to benchmark exceedances, as required by Section B.17 of the WV/NPDES permit.

The remaining four thousand four hundred seventy dollars (\$4,470) of the civil administrative penalty shall 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.

PAS agrees to pay the entire thirteen thousand four hundred ten dollars (\$13,410) held in abeyance within thirty (30) days of notice from WVDEP that PAS has failed to comply with the aforementioned revision and/or reporting requirements of its WV/NPDES permit.

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
WVDEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. PAS 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, PAS 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, PAS 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 PAS 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, PAS 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 PAS 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 PAS 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 PAS (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 PAS 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 PAS 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 PAS, its successors and assigns.

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

J. A. ...
Polymer Alliance Services, LLC

10/6/14
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

revised January 2011

RECEIVED

OCT 10 2014

ENVIRONMENTAL
ENFORCEMENT

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Polymer Alliance Service

Receiving Stream:

n/a

Treatment System Design Maximum Flow: n/a 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#													
			2a	2b	2c	3a	3b									
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1									
b)	Toxicity of Pollutant	0 to 3	0	0	0	0	0									
c)	Sensitivity of the Environment	0 to 3	0	0	0	0	0									
d)	Length of Time	1 to 3	1	1	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0	0	0									
Average Potential for Harm Factor			0.4	0.4	0.4	0.4	0.4	No								
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	3	2	2	3	2									

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)	\$650		\$650
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			\$680
Penalty =			\$17,880

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$650
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	\$650
Comments: 8 counts of failure to sample/submit DMRs.	