



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
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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: James Rakitsky
Quala Systems, Inc.
211 Welsh Pool Road, Suite 100
Exton, PA 19341

DATE: June 27, 2012

ORDER NO.: 7443

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 Quala Systems, Inc. (hereinafter "QSI").

FINDINGS OF FACT

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

1. QSI operates a truck terminal and tank trailer facility located in Institute, Kanawha County, West Virginia. QSI was issued WV/NPDES Water Pollution Control Permit No. WV0002372 on September 28, 2007. QSI was granted this WV/NPDES permit to operate a disposal system for the direct discharge of treated industrial wastes (tank truck wash waters and sanitary waste) via Outlet 001 to an unnamed tributary of the Kanawha River near Milepoint 47.9.
2. West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the aforementioned facility on February 1, 2011 and issued Notice of Violation (NOV) No. CM-JNH-020111-001 for the following deficiencies:
 - a. Discharge Monitoring Reports (DMRs) were submitted on a form that does not match the form enclosed in the permit.
 - b. Total Mercury was inaccurately reported on the October 2010 DMR.
 - c. Average monthly Oil & Grease was incorrectly reported on the October 2010 DMR.
 - d. Priority pollutant monitoring was incomplete.
 - e. Total Recoverable Zinc was collected as a grab rather than a composite.

Promoting a healthy environment.

- f. Outlet 002 flow estimates were not representative of storm events.
 - g. Fecal coliform exceeded the maximum daily permitted limitation at Outlet 001 during this inspection.
3. The discharge of pollutants into waters of the state by QSI in amounts that exceed permitted limitations has been noted in eighteen (18) of the last twenty-three (23) DMRs, through May 1, 2011. These permit exceedances are violations of Appendix A I.1 and are further described and detailed in Attachment A. These violations are summarized as follows:
 - a. Twenty-one (21) minor exceedances
 - b. Twenty-five (25) moderate exceedances
 - c. Six (6) major exceedances
 4. A meeting was held between WVDEP and QSI on February 24, 2012 to discuss the terms of this Order.
 5. On June 26, 2012, WVDEP personnel and a representative of QSI discussed the terms 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. QSI shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of entry of this Order, QSI shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when QSI 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
PO 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 QSI's permit violations, QSI shall be assessed a civil administrative penalty of forty-nine thousand seven hundred fifty-six dollars (\$49,756) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry of this Order. 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. QSI 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, QSI 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, QSI 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 QSI 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, QSI 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 QSI 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 QSI 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 QSI (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 QSI 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 QSI 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 QSI, its successors and assigns.
- 7. This Order shall terminate upon QSI's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


 James Rakitski
 Quala Systems, Inc.

7-27-12
 Date

Public Notice begin: _____
 Date

Public Notice end: _____
 Date

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

 Date

revised January 2011



JUL 30 2012

ENVIRONMENTAL
 ENFORCEMENT

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

QSI

Receiving Stream:

unnamed trib of Kanawha

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#													
			2a	2b	2c	2d	2e	2f	2g	3a	3b	3c				
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1				
b)	Toxicity of Pollutant	0 to 3	0	1	1	1	1	1	1	1	1	1				
c)	Sensitivity of the Environment	0 to 3	0	0	0	0	0	0	0	0	1	1	1			
d)	Length of Time	1 to 3	2	1	1	1	1	1	1	1	1	1				
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0	0	0	0	0	0	1	1	1			
Average Potential for Harm Factor			0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	1	1	1	No	No	No
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	2	1	1	1	1	1	1	1	1	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.

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
2a	Minor	Moderate	\$1,300	1	\$1,300
2b	Minor	Minor	\$600	1	\$600
2c	Minor	Minor	\$600	1	\$600
2d	Minor	Minor	\$600	1	\$600
2e	Minor	Minor	\$600	1	\$600
2f	Minor	Minor	\$600	1	\$600
2g	Minor	Minor	\$600	1	\$600
3a	Minor	Minor	\$1,000	14	\$14,000
3b	Minor	Moderate	\$1,500	16	\$24,000
3c	Minor	Major	\$2,000	5	\$10,000
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$52,900

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 -	10		\$5,290
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		6	(\$3,174)
6.2.b.3 - Cooperation with the Secretary		10	(\$5,290)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$3,144)
Penalty =			\$49,756

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:	

ATTACHMENT A
 Qula Systems, Inc. Exceedances

Outlet 001 DMR Exceedances - AVG. MONTHLY - 07/09 through 05/11						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
						-	-	-
7-1-09	BOD	mg/L	22	37	68%	-	X	-
7-1-09	TSS	mg/L	26	94	262%	-	X	-
8-1-09	TSS	mg/L	26	30	15%	X	-	-
9-1-09	TSS	mg/L	26	34	31%	X	-	-
1-1-10	TSS	mg/L	26	38	46%	-	X	-
2-1-10	Copper, Total Recoverable	mg/L	0.0067	0.0088	31%	X	-	-
3-1-10	Copper, Total Recoverable	mg/L	0.0067	0.0196	193%	-	X	-
4-1-10	Copper, Total Recoverable	mg/L	0.0067	0.0153	128%	-	X	-
4-1-10	Mercury, Total	ug/L	0.0098	0.01197	22%	X	-	-
5-1-10	Copper, Total Recoverable	mg/L	0.0067	0.0185	176%	-	X	-
5-1-10	Mercury, Total	ug/L	0.0098	0.0829	746%	-	-	X
6-1-10	Copper, Total Recoverable	mg/L	0.0067	0.0173	158%	-	X	-
7-1-10	Zinc, Total Recoverable	mg/L	0.0471	0.0533	13%	X	-	-
7-1-10	Copper, Total Recoverable	mg/L	0.0067	0.0192	187%	-	X	-
8-1-10	TSS	mg/L	26	33	27%	X	-	-
8-1-10	Fecal Coliform	cnts/100	200	2300	1050%	-	-	X
8-1-10	Zinc, Total Recoverable	mg/L	0.0471	0.0525	11%	X	-	-
8-1-10	Copper, Total Recoverable	mg/L	0.0067	0.022	228%	-	X	-
9-1-10	Zinc, Total Recoverable	mg/L	0.0471	0.0673	43%	-	X	-
9-1-10	Copper, Total Recoverable	mg/L	0.0067	0.03	348%	-	-	X
10-1-10	Copper, Total Recoverable	mg/L	0.0067	0.0314	369%	-	-	X
11-1-10	Zinc, Total Recoverable	mg/L	0.0471	0.0902	92%	-	X	-
11-1-10	Copper, Total Recoverable	mg/L	0.0067	0.0145	116%	-	X	-
11-1-10	Mercury, Total	ug/L	0.0098	0.0339	246%	-	X	-
12-1-10	Copper, Total Recoverable	mg/L	0.0067	0.0098	46%	-	X	-
12-1-10	Mercury, Total	ug/L	0.0098	0.0152	55%	-	X	-
2-1-11	Oil and Grease, Hexane	mg/L	16	16.45	3%	X	-	-
2-1-11	Zinc, Total Recoverable	mg/L	0.0471	0.0493	5%	X	-	-
3-1-11	Zinc, Total Recoverable	mg/L	0.0471	0.119	153%	-	X	-
3-1-11	Copper, Total Recoverable	mg/L	0.0067	0.0087	30%	X	-	-
4-1-11	Zinc, Total Recoverable	mg/L	0.0471	0.283	501%	-	-	X
4-1-11	Copper, Total Recoverable	mg/L	0.0067	0.0169	152%	-	X	-
4-1-11	Mercury, Total	ug/L	0.0098	0.0858	776%	-	-	X
5-1-11	Copper, Total Recoverable	mg/L	0.0067	0.0183	173%	-	X	-

ATTACHMENT A
 Quala Systems, Inc. Exceedances

Outlet 001 DMR Exceedances - MAX. DAILY - 07/01/09 through 05/01/11						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
						-	-	-
7-1-09	TSS	mg/L	58	141	143%	-	X	-
7-1-09	Fecal Coliform	cnts/100	400	836	109%	-	X	-
3-1-10	Copper, Total Recoverable	mg/L	0.015	0.0196	31%	X	-	-
4-1-10	Copper, Total Recoverable	mg/L	0.015	0.0153	2%	X	-	-
5-1-10	Copper, Total Recoverable	mg/L	0.015	0.0185	23%	X	-	-
5-1-10	Mercury, Total	ug/L	0.0197	0.0829	321%	-	X	-
6-1-10	Copper, Total Recoverable	mg/L	0.015	0.0173	15%	X	-	-
7-1-10	Copper, Total Recoverable	mg/L	0.015	0.0192	28%	X	-	-
8-1-10	Fecal Coliform	cnts/100	400	2300	475%	-	X	-
8-1-10	Copper, Total Recoverable	mg/L	0.015	0.022	47%	X	-	-
9-1-10	Copper, Total Recoverable	mg/L	0.015	0.03	100%	X	-	-
10-1-10	Copper, Total Recoverable	mg/L	0.015	0.0314	109%	-	X	-
11-1-10	Mercury, Total	ug/L	0.0197	0.0339	72%	X	-	-
3-1-11	Zinc, Total Recoverable	mg/L	0.1004	0.119	19%	X	-	-
4-1-11	Zinc, Total Recoverable	mg/L	0.1004	0.283	182%	-	X	-
4-1-11	Copper, Total Recoverable	mg/L	0.015	0.0169	13%	X	-	-
4-1-11	Mercury, Total	ug/L	0.0197	0.0858	336%	-	X	-
5-1-11	Copper, Total Recoverable	mg/L	0.015	0.0183	22%	X	-	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	21	25	6



ENVIRONMENTAL SERVICES

Via Federal Express

July 27, 2012

West Virginia Department of Environmental Protection
Division of Water and Waste Management
ATTN: Michael A. Zeto, Chief Inspector
601 57th Street SE
Charleston, West Virginia 25304

RE: Quala Systems, Inc., Institute, WV
Consent Order No.: 7443

Dear Mr. Mandirola:

This is to submit the Revised Consent Order dated June 27, 2012, issued to Quala Systems, Inc., Institute, West Virginia. The Order has been signed by an authorized Quala Systems, Inc. representative.

If you have any questions, please contact me at 813-569-7273.

Sincerely,

QUALA SYSTEMS, INC.

A handwritten signature in black ink that reads 'James A. Rakitsky'. The signature is fluid and cursive, with a large, sweeping flourish at the end.

James A. Rakitsky
Vice President, Environmental Services

Enclosures