



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
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**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Tri Lake Holdings, Inc.
Eric Carper, President
7336 Arden Nollville Rd
Martinsburg, WV 25401

DATE: August 22, 2014

ORDER NO.: 8063

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 Tri Lake Holdings, Inc. (hereinafter "Tri Lake").

FINDINGS OF FACT

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

1. Tri Lake operates a wastewater treatment pond located near Berkeley Springs, Morgan County, West Virginia. Tri Lake was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550387, on April 11, 2011.
2. On July 19, 2013, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Tri Lake's WV/NPDES permit were observed and documented:
 - a. Section B.3-Tri Lake failed to submit Discharge Monitoring Reports (DMRs) within twenty (20) days following the end of the reporting period.
 - b. Section F.1-Tri Lake failed to properly operate and maintain the facility. Specifically, Tri Lake allowed brush and trees to grow on the banks of the pond, which could cause the release of untreated wastewater to the stream.
 - c. Section G.3-The facility had no Class S certified wastewater operator.

Promoting a healthy environment.

As a result of the aforementioned violations, a warning was given to Tri Lake.

3. On November 12, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Tri Lake's WV/NPDES permit were observed and documented:
 - a. Section G.3-The facility had no Class S certified wastewater operator.
 - b. Section F.1-Tri Lake failed to properly operate and maintain the facility. Specifically, Tri Lake failed to remove the trees/brush along the bank.
 - c. Section B.3-Tri Lake failed to submit DMRs within twenty (20) days following the end of the reporting period.
 - d. Section G.2-Tri Lake failed to adequately protect the facility with fencing. Tri Lake failed to secure the wastewater plant from unlawful entry.
 - e. Tri Lake applied to upgrade its pond system to a 50,000 gallon per day (gpd) package plant in 2010. Health Dept Permit No. 18,607 was issued and WVDEP approved the modification on December 10, 2010. The plant was on-site, but had not been installed.

As a result of the aforementioned violations, Notice of Violation (NOV) No. w13-33-138-203 was issued to Tri Lake.

4. On July 15, 2014, WVDEP personnel and a representative of Tri Lake met to discuss the terms and conditions of this Order.
5. On August 1, 2014, Tri Lake submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Tri-Lake's ability to pay a civil administrative penalty.

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. Tri Lake shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within sixty (60) days of the effective date of this Order, Tri Lake shall remove all brush/trees from the bank of the pond, in accordance with Section F.1 of the WV/NPDES Permit.
3. Tri Lake shall immediately begin sampling and electronically submitting the results in e-DMR, as required in Section B of the WV/NPDES permit.
4. Within thirty (30) days of the effective date of this Order, Tri Lake shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Tri Lake 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. WV0103110, Registration No. WVG550387, and Order No. 8063. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NE Regional Environmental Enforcement Office
22288 Northwestern Pike
Romney, WV 26757**

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.

5. Because of Tri Lake's permit violations, Tri Lake shall be assessed a civil administrative penalty of three thousand dollars (\$3,000) 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 \$500 due on or before November 1, 2014.
Payment 2 in the amount of \$500 due on or before December 1, 2014.
Payment 3 in the amount of \$500 due on or before January 1, 2015.
Payment 4 in the amount of \$500 due on or before February 1, 2015.
Payment 5 in the amount of \$500 due on or before March 1, 2015.
Payment 6 in the amount of \$500 due on or before April 1, 2015.

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

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



Eric Carper, President
Tri Lake Holdings, Inc.

9/9/2014

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised January 2013

RECEIVED

SEP 11 2014

ENVIRONMENTAL
ENFORCEMENT

Tri-Lake Holding
Wastewater treatment
Pictures 7/19/13



Picture 1: Wastewater in Chlorination/
Dechlorination Chamber



Picture 2: Weir in Chlorination/
Dechlorination Chamber



Picture 3: Chlorination/
Dechlorination Chamber



Picture 4: Pond with trees on the bank on left side

**Tri-Lake Holding
Wastewater treatment
Pictures 11/12/13**



Picture 1: Unsecure access to facility



Picture 2: Trees growing along bank of pond

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Tri-Lake Holding Inc **Receiving Stream:** unnamed trib of Middle Fork of Sleepy Creek

Treatment System Design Maximum Flow: 49,990 MGD

Treatment System Actual Average Flow: 7,500 MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#													
			2b	2c	3a	3b	3c	3d								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	0	1								
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	0	1								
d)	Length of Time	1 to 3	1	1	2	2	1	1								
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0	0	0	0								
Average Potential for Harm Factor			0.8	0.8	1	1	0.4	0.8	No							
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	1	3	3	3	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 -	10		\$2,170
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$7,600		\$7,600
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)		40	(\$8,680)
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	(\$2,170)
6.2.b.3 - Cooperation with the Secretary		10	(\$2,170)
6.2.b.5 - Ability to Pay		71.335	(\$15,480)
Penalty Adjustments			(\$18,700)
Penalty =			\$3,000

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$1,600
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	\$6,000
Estimated Economic Benefit	\$7,600
Comments:	Avoided cost of hiring a certified operator: \$1,000 x 6 months= \$6,000 Avoided cost of sample analysis/submittal: \$200 x 8 quarters=\$1,600