



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 State Properties and Land Development, LLC. DATE: September 21, 2015
Bryan Paynter
PO Box 182 ORDER NO.: 7885
Barboursville, WV 25504

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 State Properties and Land Development, LLC. (hereinafter "Tri State Properties").

FINDINGS OF FACT

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

1. Tri State Properties was conducting land disturbance activity in Barboursville, Cabell County, West Virginia.
2. On February 5, 2013, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and WV Legislative Rules were observed and documented:
 - a. 22-11-8 and 47CSR10-Tri State Properties failed to obtain a WV/NPDES Permit prior to commencing construction activity with land disturbance greater than one (1) acre.

As a result of the aforementioned violations, Notice of Violation (NOV) No. I13-06-181-MBC was issued to Tri State Properties.

Promoting a healthy environment.

3. On February 25, 2013, WVDEP issued Order No. 7805 to Tri State Properties for failing to obtain a WV/NPDES permit prior to commencing construction activity with land disturbance greater than one (1) acre.
4. On April 9, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code were observed and documented:
 - a. 22-11-1 et seq.-Tri State Properties failed to comply with Order No. 7805 by:
 - i. failing to submit an administratively complete application for registration under the WV/NPDES permit for Storm Water Associated with Construction Activities.
 - ii. failing to install and maintain necessary storm water and sediment/erosion control devices to prevent the release of sediment-laden water in waters of the State.
 - iii. failing to temporarily mulch the site until coverage under a valid WV/NPDES permit for Storm Water Associated with Construction Activity was obtained.

As a result of the aforementioned violation, NOV No. I13-06-208-MBC was issued to Tri State Properties.

5. On June 6, 2013, Tri-State Properties was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106602, for land disturbance activity at the aforementioned site.
6. On July 25, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of Tri State Properties' WV/NPDES permit and WV State Code were observed and documented:
 - a. G.4.b.8 – The Permittee failed to display a public notice sign near the entrance to the construction site for the duration of the project.
 - b. C.15 – The Permittee failed to post an outlet marker at all permitted outlets from the construction site.
 - c. G.4.e.2.C.vi – The Permittee failed to maintain inspection and maintenance records on-site and available for review.
 - d. 22-11-1 et seq. – Tri State Properties failed to comply with Order No. 7805 by failing to install and maintain necessary storm water and sediment/erosion control devices to prevent the release of sediment-laden water in waters of the State.
 - e. G.4.e.2.A.ii.j – The Permittee allowed sediment-laden water to leave the site without going through an appropriate device.
 - f. D.1 – The Permittee failed to operate and maintain all erosion control devices.

As a result of the aforementioned violations, NOV Nos. I13-06-234-MBC, I13-06-235-MBC, I13-06-236-MBC, I13-06-237-MBC, I13-06-238-MBC, and I13-06-239-MBC were issued to Tri State Properties.

7. On September 4, 2013, WVDEP personnel and a representative of Tri State Properties met to discuss the terms and conditions of this Order.
8. On November 14, 2013, Tri State Properties submitted financial documents to WVDEP. The provided information was used to perform an economic analysis which evaluated Tri State Properties' 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 State Properties has taken all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules, and shall continue in compliance therewith.
2. Because of Tri State Properties' West Virginia Code, Legislative Rule, and permit violations, Tri State Properties shall be assessed a civil administrative penalty of one thousand dollars (\$1,000) to 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. 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 State Properties 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 State Properties 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 State Properties 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 State Properties 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 State Properties 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 State Properties becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Tri State Properties 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 State Properties 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 State Properties (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 State Properties 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 State Properties 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 State Properties, its successors and assigns.



Tri State Properties and Land Development
LLC by Bryan Paynter, Member

4-18-16

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

RECEIVED

APR 27 2016

ENVIRONMENTAL
ENFORCEMENT



Land disturbance associated with development of subdivision on 8.3 acres of land.



No site registration sign has been posted at the entrance.



Construction activity has continued on the site despite the cease and desist order.



Insufficient vegetative cover on an inactive portion of the site.



Silt fence not trenched in with erosion rills being cut under the silt fence



Sediment laden is leaving the site as evidenced by the deposits along the fence line.



Silt fence not properly joined



Silt fence not properly installed.



Driveway for the old house is acting as a diversion and vegetation is slowing down the water at this point allowing some sediment to settle out. No controls are installed at the bottom of this driveway.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Tri State Properties and Land Development, LLC **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#													
			2a	4ai	4aia	4aiii	6a	6b	6c	6d	6e	6f				
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1			
b)	Toxicity of Pollutant	0 to 3	0	0	1	1	0	0	0	1	1	1				
c)	Sensitivity of the Environment	0 to 3	0	0	1	1	0	0	0	1	1	1				
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	2	1	1				
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0	0	0	0	0	0	1	0				
Average Potential for Harm Factor			0.4	0.4	0.8	0.8	0.4	0.4	0.4	1	1	0.8	No	No	No	
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	3	3	3	3	3	3	3	3	3	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	Major	\$1,700	1	\$1,700
4ai	Minor	Major	\$1,700	1	\$1,700
4aai	Minor	Major	\$1,900	1	\$1,900
4aiii	Minor	Major	\$1,900	1	\$1,900
6a	Minor	Major	\$1,700	1	\$1,700
6b	Minor	Major	\$1,700	1	\$1,700
6c	Minor	Major	\$1,700	1	\$1,700
6d	Minor	Major	\$2,000	1	\$2,000
6e	Minor	Major	\$2,000	1	\$2,000
6f	Minor	Major	\$1,900	1	\$1,900
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					\$18,200

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		\$1,820
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			\$0
6.2.b.3 - Cooperation with the Secretary		5	(\$910)
6.2.b.5 - Ability to Pay		99.67	(\$18,140)
Penalty Adjustments			(\$17,200)
Penalty =			\$1,000

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:	