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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: (304) 926-0495  
Fax: (304) 926-0463

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

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

TO: Andrew Gongola, President  
Three Rivers Iron and Metal  
21 High Street  
Elkins, WV 26241

DATE: August 14, 2012

ORDER NO.: 7698

**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 Three Rivers Iron and Metal (hereinafter "Three Rivers").

**FINDINGS OF FACT**

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

1. Andrew Gongola, in part or in whole, owns and operates Three Rivers, a metal recycling facility. Three Rivers is located at 500 Virginia Avenue in Fairmont, Marion County, West Virginia. Three Rivers accepts, sorts, and recycles ferrous and non-ferrous metals. Three Rivers was reissued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration Number WVG610744, on May 4, 2010.
2. On November 4, 2004, Andrew Gongola (dba Three Rivers) was issued Order No. 5587 by the West Virginia Department of Environmental Protection (WVDEP) for violating WV State Code 22-15. Specifically, Three Rivers accepted and unlawfully deposited approximately 600 tons of incinerator ash from Clean Metal, a separate entity also owned by Andrew Gongola.
3. On February 14, 2005, WVDEP personnel inspected Three Rivers and documented the following:

Promoting a healthy environment.

- a. Several hundred tons of ash remained on site without an impervious cover, a violation of the terms and conditions of Order No. 5587 and WV State Code 22-15-15.
- b. All incinerator ash was not removed from site, a violation of the terms and conditions of Order No. 5587 and WV State Code 22-15-15.
- c. A large puddle of water covered with oil was observed on the lower end of the site.

Notice of Violation (NOV) No. I-05-25-021405-003 was issued to Three Rivers for failing to comply with Order No. 5587.

4. By correspondence to WVDEP, dated March 2, 2005, Three Rivers stated that 550 tons of ash from its facility would be shipped to Meadowfill Landfill by March 31, 2005.
5. By correspondence from WVDEP, dated March 9, 2007, Three Rivers was advised to submit its second half 2005 and 2006 Discharge Monitoring Reports (DMRs) to WVDEP.
6. By correspondence from WVDEP, dated March 7, 2008, Three Rivers was advised to submit 2007 DMRs to WVDEP.
7. By correspondence to WVDEP, dated October 30, 2008, Three Rivers stated that an oil/water separator would be installed in a few weeks, and the Stormwater Pollution Prevention Plan (SWPPP) and Groundwater Protection Plan (GPP) would be updated to include all land parcels being utilized for industrial activity.
8. On October 3, 2011, WVDEP personnel inspected Three Rivers and observed and documented the following:
  - a. Storm water mixed with petroleum products was flowing onto or under the land surface in such a manner that could impact groundwater, a violation of WV Legislative Rule 47CSR58 Section 7. Specifically, Best Management Practices (BMPs) to prevent and/or reduce stormwater contamination were not adequate, apparent, or effective. In response to this deficiency, NOV No. NW-JME-100311-001 was issued to Three Rivers.
  - b. Three Rivers failed to modify its SWPPP within thirty (30) days after finding that the 2009 and 2010 sampling results were over the benchmark value (Table One), a violation of Section B.7 of its WV/NPDES permit. In response to this deficiency, NOV No. NW-JME-100311-002 was issued to Three Rivers.
  - c. Three Rivers failed to comply with its SWPPP and GPP, a violation of Appendix A.I.1.a of its WV/NPDES permit. Specifically, Three Rivers failed to do the following:
    - i. conduct internal inspections to evaluate the effectiveness of its stormwater program.
    - ii. conduct and document annual storm water training to employees.
    - iii. update its SWPPP and GPP to reflect all land parcels being used in its operation.
    - iv. store car batteries in a proper manner inside the facility.

*use about here  
to check it*

- v. install the oil/water separator, as indicated in the aforementioned October 30, 2008 correspondence.
- vi. record visual observations of storm water during sampling periods.

In response to these deficiencies, NOV No. NW-JME-100311-003 was issued to Three Rivers.

- vii. The outfall sign was not posted at outfall 001, a violation of Appendix A.I.13 of its WV/NPDES Permit.

In response to this deficiency, a warning was issued to Three Rivers.

9. By correspondence to WVDEP, dated November 15, 2011, Three Rivers stated the following:

- a. All materials with the potential to leak petroleum onto or under the ground surface would be removed by December 31, 2011.
- b. The GPP and SWPPP would be updated by December 21, 2011.
- c. An oil/water separator would be installed by December 31, 2011.
- d. Batteries would be stored under protection.
- e. Used oil drums would be properly labeled.
- f. A sign for outfall 001 would be installed.
- g. DMRs would be submitted.

10. On March 14, 2012, WVDEP personnel conducted a review of records, which revealed that Three Rivers failed to submit 2<sup>nd</sup> half 2011 DMRs, a violation of Section A.III. of its WV/NPDES Permit. In response to this deficiency, NOV No. NW-JME-031412-001 was issued to Three Rivers.

### **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. Three Rivers shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within thirty (30) days of entry of this Order, Three Rivers shall submit two (2) copies of a detailed and accurate site map depicting property boundaries, areas of operation, buildings, permanent or semi-permanent equipment placement, scales, oil/water separator, impervious and pervious surfaces, the location of all outfalls, the location of all ditches/channels/culverts, and the pattern of storm water surface flow over the site. The maps shall be accurately and appropriately scaled to determine distances, prepared and approved by a Registered Professional Engineer, and submitted on a standard 24" x 36" format.

*Can we modify this?*

3. Within thirty (30) days of entry of this Order, Three Rivers shall install permanent and durable property boundary markers. The markers shall be of sufficient size and color to be easily recognized by employees.
4. Within ninety (90) days of entry of this Order, Three Rivers shall conduct a composite soil analysis on the entire site using a 40' by 40' utility grid pattern. The soil sample shall be collected from a core no greater than four (4) inches deep and shall be analyzed for Total Petroleum Hydrocarbons (TPH) for diesel range (DRO), oil range (ORO) and gas range organics (GRO). Each core hole shall be temporarily identified with a marker. Sample results shall be submitted to WVDEP within twenty (20) days of receipt from the laboratory and in a format necessary to identify and correlate each core hole with sample analysis. Each core hole shall be identified and properly depicted on the map required in Order For Compliance No. 2.
5. Three Rivers shall provide WVDEP seven (7) days of advanced notification of sampling events. WVDEP reserves the right to split, collect and/or observe its own samples.
6. Within one hundred twenty (120) days of entry of this Order, Three Rivers shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Three Rivers will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. This plan shall also include:
  - a. A list of BMPs that will be implemented on-site to reduce stormwater contaminants. These BMPs will be implemented within twenty (20) days after approval of the plan of corrective action.
  - b. A table depicting the soil sampling results at each sampling station for TPH DRO, ORO, and GRO.

The plan of corrective action, map, and soil analysis shall be submitted to:

**Environmental Inspector Supervisor  
NW Regional Environmental Enforcement Office  
2031 Pleasant Valley Road  
Fairmont, WV 26554**

A copy of the documents shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

Upon approval, 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 corrective action plan and schedule or failure to adhere to the approved schedule is a violation of this Order.

7. Within one hundred twenty (120) days of entry of this Order, Three Rivers shall submit an administratively complete application for an individual industrial stormwater WV/NPDES permit. The application shall include a revised SWPPP and GPP.
8. Because of Three Rivers' Legislative Rule and permit violations, Three Rivers shall be assessed a civil administrative penalty of twenty thousand three hundred thirty dollars (\$20,330) 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

#### **OTHER PROVISIONS**

1. Three Rivers 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, Three Rivers 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, Three Rivers 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 Three Rivers 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, Three Rivers 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 Three Rivers 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 Three Rivers 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 Three Rivers (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 Three Rivers 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 Three Rivers 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 Three Rivers, its successors and assigns.
7. This Order shall terminate upon Three Rivers' notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



\_\_\_\_\_  
Andrew Gongola, President  
Three Rivers Iron and Metal

9-10-12

\_\_\_\_\_  
Date

Public Notice begin: \_\_\_\_\_  
Date

Public Notice end: \_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

**RECEIVED**

SEP 13 2012

ENVIRONMENTAL  
ENFORCEMENT



Photo 1

Sump where outfall 001 is located



Photo 2



Photo 3

Batteries without protection



Photo 4



Photo 5

Area being used that is not listed in site map and below sump and outfall 001



Photo 6



Photo 7

Contaminated runoff observed throughout the site; above and below sump

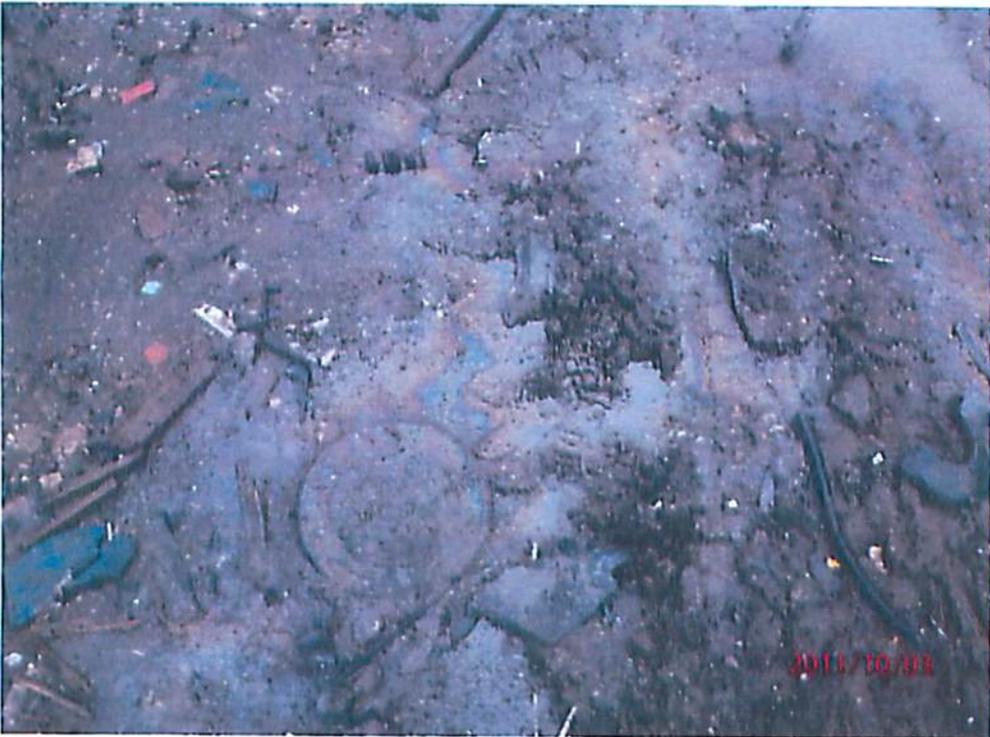


Photo 8



Photo 9

Storage for used oil; not properly labeled

Three Rivers		WVG610744		2009		
Parameter	1st Half	2nd Half	Units	Benchmark	Annual Avg.	% Exceedance
TSS	1190	530	mg/l	100	860	760%
TR. Zn	1.817	0.989	mg/l	0.12	1.403	1069%
TR. Pb	1.024	0.6	mg/l	0.12	0.812	577%
TR. Cu	0.619	0.728	mg/l	0.06	0.6735	1023%
TR. Al	7.046	4.578	mg/l	0.75	5.812	675%
TR. Fe	20.139	8.396	mg/l	1	14.2675	1327%
COD	396	632	mg/l	120	514	328%
Oil and Grease	54.6	70.4	mg/l	15	62.5	317%

Three Rivers		WVG610744		2010		
Parameter	1st Half	2nd Half	Units	Benchmark	Annual Avg.	% Exceedance
TSS	604	604	mg/l	100	604	504%
TR. Zn	2.511	2.511	mg/l	0.12	2.511	1993%
TR. Pb	0.968	0.968	mg/l	0.12	0.968	707%
TR. Cu	0.818	0.818	mg/l	0.06	0.818	1263%
TR. Al	7.878	7.878	mg/l	0.75	7.878	950%
TR. Fe	15.966	15.966	mg/l	1	15.966	1497%
COD	460	460	mg/l	120	460	283%

Table One. Three Rivers reported values for 2009 and 2010.

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Three Rivers and Elkins Metal Receiving Stream:

Mon. River

Treatment System Design Maximum Flow: N/A MGD

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

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			8b	8c	10									
a)	Amount of Pollutant Released	1 to 3	1	1	1									
b)	Toxicity of Pollutant	0 to 3	0	1	0									
c)	Sensitivity of the Environment	0 to 3	0	1	0									
d)	Length of Time	1 to 3	3	3	3									
e)	Actual Exposure and Effects thereon	0 to 3	0	1	0									
Average Potential for Harm Factor			0.8	1.4	0.8	No								
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 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  $\leq 40\%$  for Avg. Monthly or  $\leq 100\%$  for Daily Max., exceed numeric WQ standard by  $\leq 100\%$ , or report doesn't contain some minor information.

Moderate = exceedance of permit limit by  $\geq 41\%$  and  $\leq 300\%$  for Avg. Monthly,  $\geq 101\%$  and  $\leq 600\%$  for Daily Max., exceed numeric WQ standard by  $\geq 101\%$  and  $\leq 600\%$  or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by  $\geq 301\%$  for Avg. Monthly,  $\geq 601\%$  for Daily Max., exceed numeric WQ standard by  $\geq 601\%$ , 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 -	30		\$4,350
6.2.b.4 - Compliance/noncompliance history	10		\$1,450
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			\$0
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$5,830</b>
<b>Penalty =</b>			<b>\$20,330</b>

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	
<b>Estimated Economic Benefit</b>	<b>\$0</b>

**Comments:**