



west virginia department of environmental protection

Environmental Enforcement
601 57th Street SE
Charleston, WV 25304
Telephone: (304)926-0470 Fax: (304)926-0488

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

January 17, 2012

Mr. Kevin Price
Tri State Airport Authority
1449 Airport Road
Huntington, WV 25704

CERTIFIED RETURN RECEIPT REQUESTED

91 7199 9991 7030 8787 5683

Dear Mr. Price:

Revised Order Number 7321 dated September 15, 2011 was received by Tri State Airport Authority on September 19, 2011. To date, you have not signed and returned the Order.

Should you decide to sign the draft Order, please mail the signed Order within five (5) days of receipt to the address below:

**Chief Inspector
Environmental Enforcement – Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

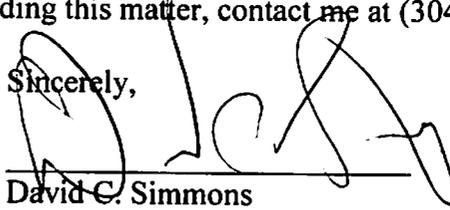
RECEIVED

JAN 25 2012

**ENVIRONMENTAL
ENFORCEMENT**

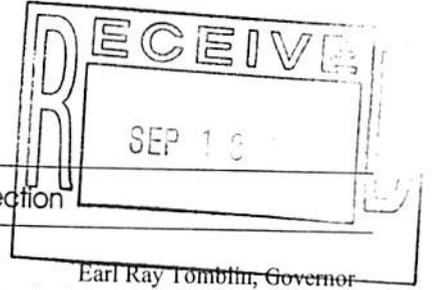
If you have any questions regarding this matter, contact me at (304) 926-0470.

Sincerely,



David C. Simmons
Enforcement Hearing Officer

cc: Michael A. Zeto, Chief Inspector, EE
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)
Laura McGee, Environmental Resources Specialist, EE (via e-mail)
Cynthia Musser, Environmental Inspector Supervisor, EE/WW (via e-mail)



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September 15, 2011

Mr. Kevin Price
Tri State Airport Authority
1449 Airport Road
Huntington, WV 25704

CERTIFIED RETURN RECEIPT REQUESTED

**RE: Violation of Chapter 22, Article 11
of the WV State Code**

Dear Mr. Price:

Enclosed is revised CONSENT ORDER NUMBER 7321 dated September 15, 2011. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to Tri State Airport Authority violating Chapter 22, Article 11 of the WV State Code at its facility located near Wayne, Wayne County, West Virginia. This revision is based upon your recent submittal of information to David C. Simmons, Enforcement Hearing Officer. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,

Michael A. Zeto
Chief Inspector

Marsha
This is the reduced amount
after the appeal we made
It needs to be paid
ASAP
Thanks
Shirley

- WWM (via e-mail)
- WWM/Permits
- Chief Inspector, EE/WW (via e-mail)
- Inspector, EE (via e-mail)
- Enforcement Hearing Officer, EE (via e-mail)
- Resources Specialist, EE (via e-mail)
- Inspector Supervisor, EE/WW (via e-mail)

revised September 2011



west virginia department of environmental protection

Division of Water and Waste Management
601 57th 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

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

TO: Mr. Kevin Price
Tri State Airport Authority
1449 Airport Road
Huntington, WV 25704

DATE: September 15, 2011

ORDER NO.: 7321

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 Airport Authority (hereinafter "Tri State Airport Authority").

FINDINGS OF FACT

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

1. Tri State Airport Authority operates an airport located near Wayne, Wayne County, West Virginia. Tri State Airport Authority was issued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG610051 on September 16, 2005. Said registration expired on September 30, 2009.
2. Establishments with discharges composed entirely of stormwater associated with industrial activities must obtain a permit from the West Virginia Department of Environmental Protection (WVDEP) pursuant to §22-11-8 of the State Code of West Virginia and as described in Legislative Rule Title 47, Series 10.
3. WVDEP advised Tri State Airport Authority in mid-2009, early -2010, and January 2011 to reapply for permit registration coverage under the Multi-Sector General WV/NPDES Water Pollution Control Permit for Stormwater Discharges Associated with Industrial Activity.
4. Tri State Airport Authority failed to renew its WV/NPDES permit registration.

Promoting a healthy environment.

5. On June 21, 2011 Tri State Airport submitted documentation that indicated that it is currently working toward renewal of its WV/NPDES permit.

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 Airport Authority shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within forty-five (45) days of entry of this Order, Tri State Airport Authority shall submit an administratively complete application for permit coverage for the regulated activity. This application shall be submitted to:

**Permitting Section
DWWM
ATTN: Patrick D. Burch
601 57th Street
Charleston, WV 25304**

3. Because of Tri State Airport Authority's West Virginia Code violations, Tri State Airport Authority shall be assessed a civil administrative penalty of four thousand eight hundred seventy dollars (\$4,870) 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:**

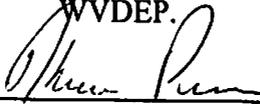
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Tri State Airport Authority 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 Airport Authority 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 Airport Authority 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 Airport Authority 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 Airport Authority 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 Airport Authority 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 Tri State Airport Authority 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 Airport Authority (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 Airport Authority 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 Airport Authority 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 Airport Authority, its successors and assigns.

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



Mr. Kevin Price
Tri State Airport Authority

9-19-11

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Tri-State Airport Authority Receiving Stream: _____

Treatment System Design Maximum Flow: 0.01 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#											
			4											
a)	Amount of Pollutant Released	1 to 3	1											
b)	Toxicity of Pollutant	0 to 3	1											
c)	Sensitivity of the Environment	0 to 3	1											
d)	Length of Time	1 to 3	3											
e)	Actual Exposure and Effects thereon	0 to 3	1											
Average Potential for Harm Factor			1.4	No										
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 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.

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 -	20		\$880
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		10	(\$440)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$470
Penalty =			\$4,870

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:	