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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) 926-0470  
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Harold D. Ward, Cabinet Secretary  
dep.wv.gov

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

TO: S&E Commercial Cleaning LLC  
Mr. Enrique Martinez  
6356 Roberto Drive  
Huntington, WV 25705

DATE: March 1, 2024

ORDER NO.: 10209

**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 22-11-1 et seq to S&E Commercial Cleaning LLC (hereinafter “S&E”).

**FINDINGS OF FACT**

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

1. S&E was subcontracted to strip and wax the floors at the Walgreens store in Oak Hill, Fayette County, West Virginia.
2. On June 9, 2023, WVDEP personnel responded to a spill report received from West Virginia Division of Natural Resources (WVDNR) personnel regarding dead fish in a stream. During the investigation, WVDEP personnel determined that S&E had dumped chemicals, including floor stripper, into the storm drain located in the store parking lot. The floor stripper was identified as Diversey Pro Strip Ultra (Ethanalamine Solution UN 2491), which is a corrosive material. Violations of the following sections of West Virginia State Code and Legislative Rules were observed and documented:

- a. 22-11-8(b)(1) – S&E discharged industrial wastewater into waters of the State without an authorized WV/NPDES permit. The floor stripper discharged into the receiving stream after being dumped into the storm drain at the store.
- b. 47CSR2 Sections 3.2.e and 3.2.f – S&E caused conditions not allowable in waters of the State by creating materials in concentrations which were harmful to aquatic life. The aforementioned discharge of industrial waste resulted in a fish kill in the receiving stream. In addition, the aforementioned discharge created a distinctly visible white color in the receiving stream.
- c. 47CSR11 Section 2.2.a – S&E failed to immediately report the aforementioned discharge of pollutants into waters of the State.
- d. 47CSR11 Section 2.5 – S&E failed to take any and all measures necessary to contain the aforementioned discharge into waters of the State.
- e. 47CSR11 Section 2.5.a – S&E failed to take any and all measures necessary to clean up, remove and otherwise render the aforementioned discharge harmless to the waters of the State. S&E did not hire a company to perform environmental remediation until several days after the discharge occurred.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W23-10-051-MAZ, W23-10-052-MAZ, and W23-10-053-MAZ were issued to S&E.

3. On December 11, 2023, WVDEP personnel and representatives of S&E met to discuss the terms and conditions of this Order.

### **ORDER FOR COMPLIANCE**

Now, therefore, in accordance with West Virginia State Code 22-11-1 et seq, it is hereby agreed between the parties, and ORDERED by the Director:

1. S&E shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, S&E shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when S&E will achieve compliance with all pertinent laws and rules. The plan of corrective action shall also describe detailed measures that S&E will undertake to prevent future occurrences of the aforementioned violations. The plan of corrective action shall make reference to Order No. 10209. The plan of corrective action shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> 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 S&E's WV State Code and WV Legislative Rule violations, S&E shall be assessed a civil administrative penalty of twelve thousand three hundred thirty dollars (\$12,330) 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: One thousand twenty-seven dollars and fifty cents (\$1,027.50) shall be submitted within thirty (30) days after the effective date of this Order and by the first day of each month thereafter for the next eleven (11) months. 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. S&E hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21. Under this Order, S&E 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, S&E 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 S&E 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, S&E 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 S&E becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and S&E 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 S&E 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 S&E (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 S&E 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 S&E 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 S&E, its successors and assigns.
7. This Order shall terminate upon S&E's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Enrique Martinez, Owner/Operator  
S&E Commercial Cleaning LLC

03-06-24  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jeremy W. Bandy, Director  
Division of Water and Waste Management

\_\_\_\_\_  
Date



Photo Log

S&E Commercial Cleaning LLC - 10-33568 - June 9, 2023 - Fayette County



Industrial waste dumped near the stormwater drop inlet in a Walgreens parking lot.



Conditions not allowable (CNA) where the drop inlet enters the stream.



Photo Log

S&E Commercial Cleaning LLC - 10-33568 - June 9, 2023 - Fayette County



CNA downstream of the storm drain.



Dead fish downstream of the storm drain.



Photo Log

S&E Commercial Cleaning LLC - 10-33568 - June 9, 2023 - Fayette County



Additional dead fish were observed downstream of the storm drain.



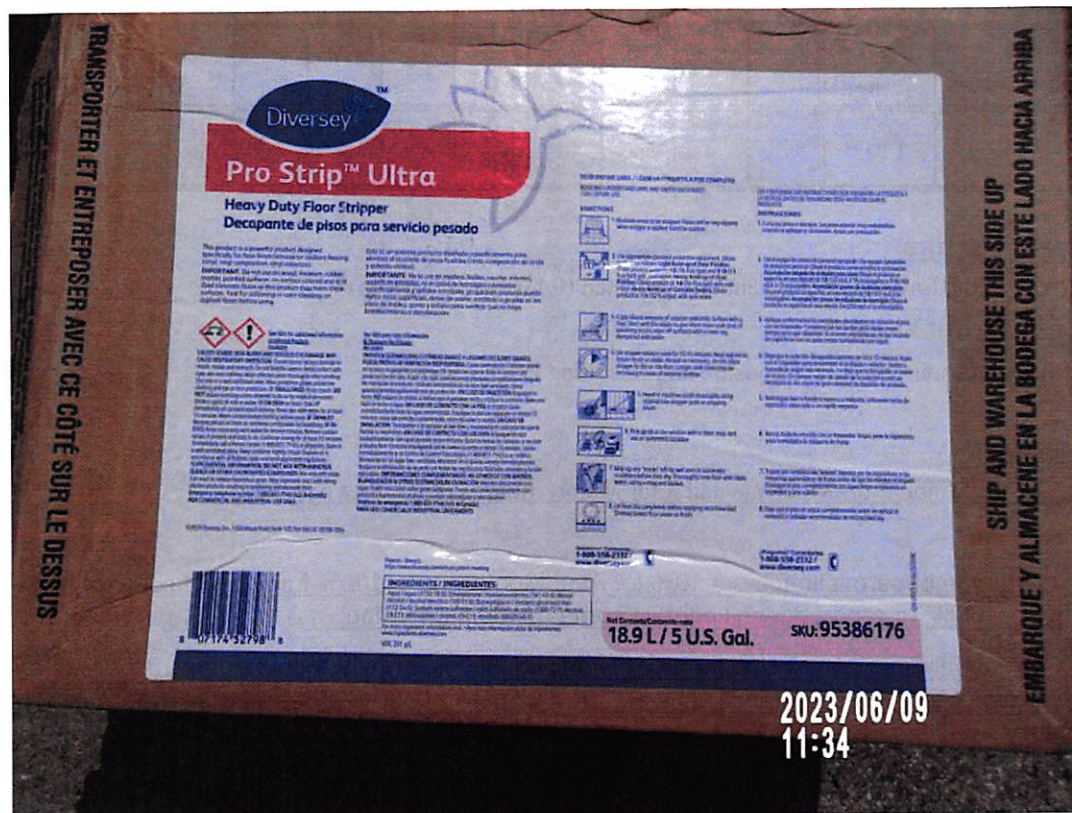
CNA downstream of the storm drain.





2023/06/09  
11:33

Floor finish used on the floor.



2023/06/09  
11:34

Floor stripper used on the floor.



## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:** S&E Commercial Cleaning LLC **Receiving Stream:** \_\_\_\_\_

**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#											
			2a	2b	2c	2d	2e							
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1							
b)	Toxicity of Pollutant	0 to 3	1	2	0	1	1							
c)	Sensitivity of the Environment	0 to 3	1	1	0	1	1							
d)	Length of Time	1 to 3	1	1	1	1	1							
e)	Actual Exposure and Effects thereon	0 to 3	1	3	0	1	1							
	<b>Average Potential for Harm Factor</b>		1	1.6	0.4	1	1	No	No	No	No	No	No	No
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>												
	Degree of Non-Compliance	1 to 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.

**Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.**

[illegible]



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

[illegible]

## **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)	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	Adjustments
6.2.b.1 - Willfulness and/or negligence -	10		\$1,230
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	(\$1,230)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$30</b>
<b>Penalty =</b>			<b>\$12,330</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>
<b>Comments:</b> Economic benefit not warranted.	