



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
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: LKQ Ernie's Auto Enterprises
Brendan McCarthy, Plant Manager
4590 Williamsport Pike
Martinsburg, WV 25404

DATE: November 23, 2015

ORDER NO.: 8428

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. and Chapter 22, Article 12, Section 1 et seq. to LKQ Ernie's Auto Enterprises (hereinafter "LKQ").

FINDINGS OF FACT

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

1. LKQ operates a salvage/recycling facility located near Martinsburg, Berkeley County, West Virginia. LKQ has operated this facility since approximately June 2013, and LKQ was issued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG610179, on December 27, 2013. The WV/NPDES permit was reissued on January 16, 2015.
2. On January 30, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:

- a. 47CSR58 Section 7.1 - LKQ allowed petroleum products to flow over and/or under the ground surface in a manner that could impact the groundwater quality.

As a result of the aforementioned violation, Notice of Violation (NOV) No. i14-02-015-203 was issued to LKQ.

3. On February 21, 2014, LKQ provided a response to WVDEP regarding the aforementioned NOV.
4. On May 1, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and LKQ's WV/NPDES permit were observed and documented:
 - a. 47CSR58 Section 7.1 - LKQ allowed petroleum products to flow over and/or under the ground surface in a manner that could impact the groundwater quality.
 - b. Section B.18.A.a.2.D-LKQ failed to maintain good housekeeping practices by allowing a chemical mixture to flow onto and/or under the ground.
 - c. Section A, Sector F- LKQ exceeded the benchmark parameters for Total Suspended Solids (TSS), Total Recoverable Lead, Total Recoverable Aluminum, Total Recoverable Zinc, Total Recoverable Iron, Chemical Oxygen Demand, and Oil & Grease for the February 2014 sample.

As a result of the aforementioned violations, NOV Nos. i14-02-063-203, i14-02-064-203 and i14-02-066-203 were issued to LKQ.

5. On June 26, 2014, WVDEP personnel received a letter from LKQ outlining the removal of contaminated soil from a leak under a trash truck.
6. On August 28, 2014, a Phase II Environmental Site Assessment (ESA) Report confirmed groundwater and soil contamination at the aforementioned site for Total Petroleum Hydrocarbons (TPHs), methyl tertiary butyl ether (MTBE), benzene, toluene, ethylbenzene, xylene (BTEX), and vinyl chloride.
7. On September 2, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, WVDEP personnel requested that LKQ immediately start remediation or further investigate the extent of contamination using a 3-D geo probe and notify WVDEP of the remediation start date. Violations of the following sections of WV Legislative Rules and LKQ's WV/NPDES permit were observed and documented:
 - a. Appendix A.III.2-LKQ failed to sample for all the parameters of the WV/NPDES permit. Specifically, Total Recoverable Copper was not sampled during February 2014.
 - b. 47CSR58 Section 7.1 - LKQ allowed petroleum products to flow over and/or under the ground surface in a manner that could impact the groundwater quality.
 - c. Section B.18.A.a.2.D-LKQ failed to maintain good housekeeping practices by allowing a chemical mixture to flow onto and/or under the ground.

As a result of the aforementioned violations, NOV Nos. i14-02-119-203 and i14-02-120-203 were issued to LKQ.

8. On October 22, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of WV Legislative Rules was observed and documented:
 - a. 47CSR58 Section 7.1-LKQ allowed petroleum products to flow over and/or under the ground surface in a manner that could impact the groundwater quality.

As a result of the aforementioned violation, NOV No. i14-02-139-203 was issued to LKQ.

9. On October 28, 2014, WVDEP personnel received a Phase II ESA Addendum Report and plan of corrective action outlining LKQ's proposal to remediate the aforementioned site.
10. On November 12, 2014, WVDEP Groundwater Program approved the plan of corrective action submitted on October 28, 2014 with several stipulations, including providing notification to WVDEP one (1) week prior to the field work.
11. On November 30, 2014, LKQ was issued WV/NPDES Permit No. WV0113727, Registration No. WVG910092, for its proposed groundwater remediation.
12. On December 30, 2014, Potesta, an environmental consulting service, notified WVDEP that the field work was complete. WVDEP personnel replied by stating that LKQ failed to notify WVDEP one (1) week prior to the start of excavation.
13. On January 8, 2015, WVDEP personnel received a letter from LKQ stating that the field work began before November 12, 2014, and LKQ did not understand it had to contact WVDEP.
14. On January 19, 2015, a soil remediation summary report received by WVDEP reflected that contamination, in the form of TPH, BTEX, and MTBE, was still present at the aforementioned site.
15. On January 26, 2015, representatives of WVDEP and LKQ met on-site. During the meeting, LKQ agreed to install eight (8) monitoring wells and conduct quarterly sampling. A plan was subsequently submitted by LKQ to the WVDEP Groundwater Program for review.
16. On February 6, 2015, WVDEP personnel received LKQ's proposed post-remediation groundwater monitoring location plan.
17. On February 13, 2015, the WVDEP Groundwater Program approved LKQ's monitoring plan with several stipulations, including contacting WVDEP prior to field work.

18. On May 18, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and LKQ's WV/NPDES permit were observed and documented:

- a. 47CSR58 Section 7.1 - LKQ allowed petroleum products to flow over and/or under the ground surface in a manner that could impact the groundwater quality.
- b. B.18.A.a.2.D-LKQ failed to maintain good housekeeping practices by allowing a chemical mixture to flow onto and/or under the ground.
- c. B.18.A.2.G-LKQ failed to modify and/or implement erosion and sediment controls. Sediment from the property was collecting in a small ephemeral stream.

As a result of the aforementioned violations, NOV No. i15-02-054-203 was issued to LKQ.

19. On May 19, 2015, WVDEP personnel received LKQ's post remediation groundwater monitoring report for the 1st Quarter of 2015.

20. On May 20, 2015, WVDEP personnel responded to the May 19, 2015 report by stating that LKQ failed to provide notification prior to sampling events.

21. On June 2, 2015, an anonymous complaint was received by WVDEP personnel regarding LKQ allowing fluids to leak out of cars and onto the ground.

22. On June 3, 2015, WVDEP personnel conducted an inspection of the facility. WVDEP personnel requested immediate access to the site, but access was denied. After approximately ten (10) minutes, access was granted, and WVDEP personnel observed LKQ employees shoveling absorbent and placing it into a bucket on a loader. During the inspection, violations of the following sections of WV Legislative Rules and LKQ's WV/NPDES permit were observed and documented:

- a. 47CSR58 Section 7.1 - LKQ allowed petroleum products to flow over and/or under the ground surface in a manner that could impact the groundwater quality.
- b. Section B.18.A.a.2.D-LKQ failed to maintain good housekeeping practices by allowing a chemical mixture to flow onto and/or under the ground.

As a result of the aforementioned violations, NOV No. i15-02-053-203 was issued to LKQ.

23. On June 30, 2015, WVDEP personnel received LKQ's post remediation groundwater monitoring report for the 2nd Quarter of 2015.

24. On September 18, 2015, WVDEP personnel received LKQ's post remediation groundwater monitoring report for the 3rd Quarter of 2015.

25. On November 17, 2015, WVDEP personnel and a representative of LKQ met to discuss the terms and conditions of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. LKQ shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and all pertinent laws and rules.
2. Upon the effective date of this Order, LKQ shall begin granting WVDEP personnel immediate access to the aforementioned facility, including the rear gate that leads to the stream.
3. Upon the effective date of this Order, LKQ shall at all times maintain on-site a key to the rear gate that leads to the stream.
4. Upon the effective date of this Order, LKQ shall begin providing notification to the WVDEP Environmental Enforcement Inspector and WVDEP Groundwater Program at least five (5) days prior to any remediation, surface water sampling (with the exception of routine stormwater sampling required by Section A of its WV/NPDES permit), monitoring well sampling, and well removal.
5. LKQ shall adhere to the terms and conditions of the aforementioned plan of corrective action and monitoring plan, as approved by WVDEP Groundwater Program. Failure to adhere to the plans is a violation of this Order.
6. Because of LKQ's Legislative Rule and permit violations, LKQ shall be assessed a civil administrative penalty of fifteen thousand six hundred ninety dollars (\$15,690) 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. LKQ hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia. Under this Order, LKQ 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, LKQ 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 LKQ 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, LKQ 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 LKQ becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and LKQ 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 LKQ 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 LKQ (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 LKQ 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 LKQ 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 LKQ, its successors and assigns.

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



Brendan McCarthy, Plant Manager
LKQ Ernie's Auto Enterprises

11/30/2015

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013

RECEIVED

DEC 04 2015

ENVIRONMENTAL
ENFORCEMENT

LKQ Ernie's Auto Enterprises

September 2, 2014



Staining on ground under a car.



Staining on ground under a car.

LKQ Ernie's Auto Enterprises



Spill with stay-dri under track excavator



Black water and booms in stream

LKQ Ernie's Auto Enterprises



Staining on ground along transmission rack



Staining near the entrance to the facility

LKQ Ernie's Auto Enterprises



Liquid running down car hood at the concrete pad

LKQ Ernie's Auto Enterprises

October 23, 2014



Petroleum in a tributary feeding a wetland.



Petroleum absorbent material in a tributary feeding a wetland

LKQ Ernie's Auto Enterprises



Dead grasses in a wetland

LKQ Ernie's Auto Enterprises

May 18, 2015



Old stain on ground



Old stain under car

LKQ Ernie's Auto Enterprises



Old stain under on ground



Absorbent covering leachate from dumpster

LKQ Ernie's Auto Enterprises

June 3, 2015



Leak from loader



Staining & absorbent on ground

LKQ Ernie's Auto Enterprises



Employees cleaning up absorbent



No secondary containment

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: LKQ Ernie's Auto Enterprises **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#													
			4b	7a	7c	18b	18c	22b								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	0	1	1	1	1								
c)	Sensitivity of the Environment	0 to 3	1	0	1	1	1	1								
d)	Length of Time	1 to 3	1	1	2	3	1	3								
e)	Actual Exposure and Effects thereon	0 to 3	1	0	1	1	1	1								
Average Potential for Harm Factor			1	0.4	1.2	1.4	1	1.4	No	No	No	No	No	No	No	No
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	3	1	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
4b	Minor	Major	\$2,000	1	\$2,000
7a	Minor	Minor	\$400	1	\$400
7c	Moderate	Major	\$4,200	1	\$4,200
18b	Moderate	Major	\$4,400	1	\$4,400
18c	Minor	Major	\$2,000	1	\$2,000
22b	Moderate	Major	\$4,400	1	\$4,400
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
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					\$17,400

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		\$1,740
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		10	(\$1,740)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,740)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$1,710)
Penalty =			\$15,690

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: Economic benefit not warranted.	