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west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
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Austin Caperton, Cabinet Secretary
dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
HAZARDOUS WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18**

TO: REO Processing West Virginia
Mr. Gregg Frazier, President
221 Airport Industrial Park Road
Parkersburg, WV 26104

DATE: August 20, 2020

ORDER NO.: HW-21-002

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 22-18-1 et seq. to REO Processing West Virginia (hereinafter "REO Processing").

FINDINGS OF FACT

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

1. REO Processing operates a warehouse and packaging facility located near Parkersburg, Wood County, West Virginia and has been assigned EPA ID No. WVR000507657.
2. On August 14, 2019, WVDEP and REO Processing entered into Order No. HW-19-010. The Order was issued in response to violations of the Code of Federal Regulations and WV State Code at the aforementioned facility.
3. On July 28, 2020, WVDEP personnel conducted an inspection of the facility in response to a fire that was reported to the WVDEP Spill Hotline. During the investigation, it was determined that the fire occurred under a canopy behind a building where calcium hypochlorite had been stored. The waste calcium hypochlorite had been moved outside, after a previous fire had occurred on July 4, 2020 inside the storage area at Building Four (4). During the inspection, violations of the following sections of WV State Code and Code of Federal Regulations were observed and documented:

Promoting a healthy environment.

- a. 40CFR262.13- REO Processing failed to correctly determine its generator category based upon the amount of hazardous waste generated within a month. Approximately 3,000 pounds of waste calcium hypochlorite was generated as a result of the July 4, 2020 fire, which changed REO Processing's generator category from Very Small Quantity Generator (VSQG) to Large Quantity Generator (LQG).
- b. 22-18-8(a)-REO Processing failed to obtain a hazardous waste permit. Specifically, REO Processing failed to meet the following conditions for exemption, as defined in Code of Federal Regulations 40CFR262.1. Failing to meet these conditions results in REO Processing being subject to substantive hazardous waste regulatory requirements, including obtaining a hazardous waste storage permit.
 - i. REO Processing failed to operate in such a manner as to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, resulting in a failure to meet the exemption condition outlined in Code of Federal Regulations 40CFR262.251 as referenced in 40CFR262.17(a)(6).

As a result of the aforementioned violations, Notice of Violation (NOV) No. 2007-589 was issued to REO Processing.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with West Virginia State Code 22-18-1 et seq., it is hereby agreed between the parties, and ORDERED by the Director:

1. REO Processing 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, REO Processing shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when REO Processing will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to EPA ID No. WVR000507657 and Order No. HW-21-002. The plan of corrective action shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th 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.

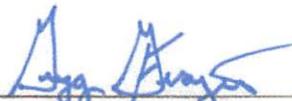
3. Because of REO Processing's Code of Federal Regulations and WV State Code violations, REO Processing shall be assessed a civil administrative penalty of sixteen thousand two hundred thirty dollars (\$16,230) to be paid to the West Virginia Department of Environmental Protection for deposit in the Hazardous Waste 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. REO Processing hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-18-20. Under this Order, REO Processing 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, REO Processing 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 REO Processing 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, REO Processing 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 REO Processing becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and REO Processing 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 REO Processing 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 REO Processing (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 REO Processing 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 REO Processing 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 REO Processing, its successors and assigns.
7. This Order shall terminate upon REO Processing's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Mr. Gregg Frazier, President
REO Processing West Virginia

8/31/2020

Date

Public Notice begin:

Date

Public Notice end:

Date

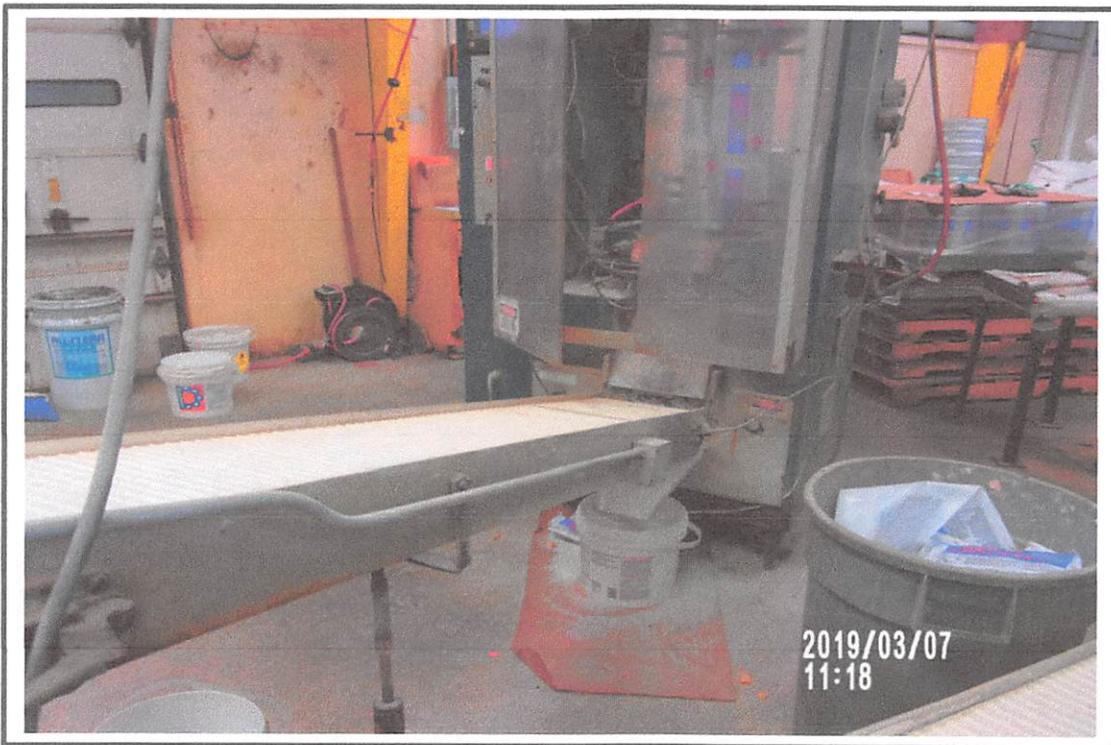
Katheryn Emery, P.E., Acting Director
Division of Water and Waste Management

Date

Photo Attachment



3/7/2019 – Central Hazardous Waste Storage Area



3/7/2019 – Calcium Hypochlorite repackaging area

Photo Attachment



7/28/2020 – Hazardous Waste Storage area after fire



7/28/2020 – Waste material runoff from fire fighting

Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party:

REO Processing West Virginia

EPA ID Number:

WVR000507657

Generator Classification: Larger Quantity

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			3a	3b										
a)	Harm to RCRA Program	1 to 3	2	3										
b)	Probability of Exposure	0 to 3	0	3										
c)	Potential Seriousness of Contamination	1 to 3	1	3										
Average Potential for Harm Factor			1	3	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	3										

Potential for Harm Factors

1a. - Harm to the RCRA Program

- All regulatory requirements are fundamental to the continued integrity of the RCRA Program
- Violations that undermine the statutory or regulatory purposes or procedures for implementing the RCRA program may have serious implications and merit substantial penalties. Examples include but are not limited to: failure to notify as a generator, failure to respond to an info request, failure to prepare or maintain a manifest, and operating / disposal without a permit

1b. - Probability of Exposure - factors to be considered include but are not limited to: evidence of a release, evidence of waste mismanagement, and adequacy of provisions for detecting and preventing a release

1c. - Potential Seriousness of Contamination - factors to consider include but are not limited to quantity and toxicity of wastes (potentially) released, likelihood or fact of transport by way of environmental media (e.g. air and groundwater), and existence, size and proximity of receptor populations (e.g. local residents, fish, wildlife) and sensitive environmental media (e.g. surface waters and aquifers.)

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

		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
3a	Minor	Major	\$2,000	1	\$2,000
3b	Major	Major	\$10,000	1	\$10,000
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					\$12,000

Penalty Adjustment Factors

(pursuant to 33CSR27-6.2)

Penalty Adjustment Factors

- 6.2.b.1 - Good faith efforts to comply or lack of good faith - 10% decrease to 10% increase
- 6.2.b.2 - Degree of Willfulness and / or Negligence - 0% to 30% increase
- 6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease
- 6.2.b.4 - History of Non-Compliance - 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
- 6.2.b.5 - Ability to pay a civil administrative penalty - 0% to 100% decrease
- 6.2.b.6 - Economic Benefit of non-compliance
- 6.2.b.7 - Staff Investigative Costs
- 6.2.b.8 - Other relevant factors determined on a case-by-case basis

Base Penalty Adjustments

(pursuant to 33CSR27-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Good Faith - Increase			\$0
6.2.b.1 - Good Faith - Decrease			\$0
6.2.b.2 - Willfulness and/or negligence	10		\$1,200
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.4 - Compliance/noncompliance history	25		\$3,000
6.2.b.5 - Ability to Pay an Administrative Penalty			\$0
6.2.b.6 - Economic Benefit (flat monetary increase)	\$0		\$0
6.2.b.7 - Staff Investigative Costs (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Cost (flat monetary increase)	\$30		\$30
Penalty Adjustments			\$4,230
Penalty =			\$16,230

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
<p>Comments: Economic benefit not warranted.</p>	