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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  
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Harold D. Ward, Cabinet Secretary  
dep.wv.gov

**CONSENT ORDER  
ISSUED UNDER THE  
HAZARDOUS WASTE MANAGEMENT ACT  
AND THE  
WATER POLLUTION CONTROL ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLES 11 AND 18**

TO: West Virginia Department of Transportation  
WVDOH – Wayne County Headquarters  
Matthew Davidson, Environmental Coordinator  
801 Madison Avenue  
Huntington, WV 25704

DATE: February 2, 2024

ORDER NO.: MM-24-01

**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. and 22-11-1 et seq. to West Virginia Department of Transportation - WVDOH - Wayne County Headquarters (hereinafter “WVDOH”).

**FINDINGS OF FACT**

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

1. WVDOH operates a road maintenance garage located in Wayne, Wayne County, West Virginia. WVDOH was assigned EPA ID No. WVD988788030 for activities at the facility associated with hazardous waste. On December 9, 2022, WVDOH was reissued WV/NPDES Water Pollution Control Permit No. WV0116246, Registration No. WVG980137, for wastewater discharges from the facility.
2. On April 27, 2023, a spill was reported at the WVDOH facility. During the spill investigation, West Virginia Department of Environmental Protection (WVDEP)

Promoting a healthy environment.

personnel observed and documented the following violations of the WV/NPDES permit and WV Legislative Rule:

- a. 47CSR10 Section 14.1.a.4. – WVDOH introduced pollutants that caused interference at the Publicly Owned Treatment Works (POTW). Specifically, approximately sixty (60) gallons of pollutant was dumped into the vehicle wash bay at the WVDOH maintenance garage. The chemical passed through the oil water separator, then continued to flow into the Town of Wayne’s wastewater treatment plant, causing an upset which ultimately resulted in the discharge of pollutant from the facility’s outlet into Twelvepole Creek. The spilled material was reported to be Chemstation No. 7341 (drag slat wash). The Safety Data Sheet (SDS) for Chemstation No. 7341 (drag slat wash) indicates a flashpoint of 129°F, which constitutes it as a D001 ignitable hazardous waste.
- b. Appendix A.IV.2.a – WVDOH failed to report non-compliance which may have endangered health or the environment immediately after becoming aware of the aforementioned spill.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W23-50-801-ATL and W23-50-802-ATL were issued to WVDOH.

3. On April 28, 2023, WVDEP personnel conducted a Non-financial Record Review (NRR) of the facility. During a discussion with WVDEP personnel, a representative of WVDOH stated that a vac truck was being utilized to remove remaining contaminant from the oil water separator at the WVDOH maintenance garage, and product was being skimmed off the top of the water at the Town of Wayne’s wastewater treatment plant. The contaminated material was being accumulated in totes and tanks. It was further represented that cleanup would be completed the next day, including final decontamination of the entire vehicle wash system. Based upon the NRR, violations of the following sections of the Code of Federal Regulations and WV State Code were determined:

- a. 40CFR262.11 – WVDOH failed to perform a hazardous waste determination of the aforementioned spilled material prior to dumping it into the vehicle wash bay.
- b. 22-18-8(a) – WVDOH disposed of hazardous waste without a permit. The spilled material was reported to be Chemstation No. 7341 (drag slat wash). The Safety Data Sheet (SDS) for Chemstation No. 7341 (drag slat wash) indicates a flashpoint of 129°F, which constitutes it as a D001 ignitable hazardous waste.

As a result of the aforementioned violations, NOV No. 2304-750 was issued to WVDOH.

4. On October 3, 2023, WVDEP personnel and representatives of WVDOH met to discuss the terms and conditions of this Order. During this meeting, it was decided that the contamination material, namely Chemstation No. 7341 (drag slat wash), had been remediated and that the training of WVDOH employees will be updated to ensure environmental compliance.

### **ORDER FOR COMPLIANCE**

Now, therefore, in accordance with West Virginia State Code 22-18-1 et seq. and 22-11-1 et seq., it is hereby agreed between the parties, and ORDERED by the Director:

1. WVDOH shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of WVDOH's Code of Federal Regulations, WV State Code, WV Legislative Rule, and WV/NPDES permit violations, WVDOH shall be assessed a total civil administrative penalty of twenty-four thousand eight hundred forty dollars (\$24,840) to be paid to WVDEP within thirty (30) days of the effective date of this Order, as follows:
  - Six thousand one hundred thirty dollars (\$6,130) shall be deposited in the Water Quality Management Fund.
  - Eighteen thousand seven hundred ten dollars (\$18,710) shall be deposited in the Hazardous Waste Management Fund.

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. WVDOH hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-18-20 and 22-11-21. Under this Order, WVDOH 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, WVDOH 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 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, WVDOH 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 becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and WVDOH 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 WVDOH 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 (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 WVDOH 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 WVDOH 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 WVDOH, its successors and assigns.
7. This Order shall terminate upon WVDOH's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

*Matthew Davidson*

*m.d.* Matthew Davidson, Env. Coordinator  
West Virginia Department of Transportation  
WVDOH - Wayne County Headquarters

*3-26-24*

\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date



Container of pollutant at WVDOH maintenance garage.



Location at WVDOH maintenance garage where pollutant was released.

WVDOH Photo Log



Pollutant in the Town of Wayne's wastewater treatment plant.



Pollutant being discharged from the wastewater treatment plant into Twelvepole Creek.









## 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		\$610
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	(\$610)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$30</b>
<b>Penalty =</b>			<b>\$6,130</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.	

## Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

**Responsible Party:** WVDOH-Wayne County      **EPA ID Number:** WVD988788030

**Generator Classification:**      VSQG

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			3.a.	3.b.											
a)	Harm to RCRA Program	1 to 3	3	3											
b)	Probability of Exposure	0 to 3	3	3											
c)	Potential Seriousness of Contamination	1 to 3	2	2											
<b>Average Potential for Harm Factor</b>			2.7	2.7	No	No	No	No	No	No	No	No	No	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	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

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
3.a	Major	Major	\$9,340	1	\$9,340
3.b	Major	Major	\$9,340	1	\$9,340
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
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
<b>Total Base Penalty</b>					<b>\$18,680</b>

## **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	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		\$1,868
6.2.b.3 - Cooperation with the Secretary		10	(\$1,868)
6.2.b.4 - Compliance/noncompliance history			\$0
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
<b>Penalty Adjustments</b>			<b>\$30</b>
<b>Penalty =</b>			<b>\$18,710</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: Economic benefit not warranted.</b>	