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west virginia department of environmental protection

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Division of Water and Waste Management  
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Charleston, WV 25304  
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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**

TO: Metalcraft Mining Equipment Rebuilders, Inc.      DATE: January 6, 2012  
Mr. Harley McClung, President  
P.O. Box 96      ORDER NO.: 7153  
Gilboa, WV 26671

**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 Metalcraft Mining Equipment Rebuilders, Inc. (hereinafter "Metalcraft").

**FINDINGS OF FACT**

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

**Fenwick Facility**

1. Metalcraft operates an equipment washing waste water treatment system located at Fenwick, Nicholas County, West Virginia. The facility was issued WV/NPDES Water Pollution Control Permit No.WV0073776, on June 29, 2007.
2. On September 25, 2009, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of this facility. During the inspection, the following violations of the terms and conditions of its WV/NPDES permit were observed and documented:
  - a. Discharge marker did not contain proper information (Appendix I.13).
  - b. Permit final effluent limitations for TSS and Total Lead were exceeded during the second quarter of 2009 (Section A.001)

Promoting a healthy environment.

3. Metalcraft worked to correct the language of the existing discharge marker and assess the effluent limitation exceedances.
4. On September 25, 2010, WVDEP personnel conducted a review of Discharge Monitoring Reports (DMRs) submitted for this facility. During the review, six (6) violations of the permitted discharge limitations were observed and documented, as listed in Section B.1 of this permit (See attached Table 1). The violations, which occurred in 1<sup>st</sup> Quarter 2009, 2<sup>nd</sup> Quarter 2009, and 1<sup>st</sup> Quarter 2010, can be further described as follows:
  - a. Minor-two (2).
  - b. Moderate-three (3).
  - c. Major-one (1).

### **Gilboa Facility**

5. Metalcraft operates an equipment washing waste water treatment system located at Gilboa, Nicholas County, West Virginia. Metalcraft was provided coverage under WV/NPDES Water Pollution Control Permit No. WV0078743, General Permit Registration No. WVG990094, which was issued on June 18, 2009.
6. On September 2, 2009, WVDEP personnel conducted an inspection of this facility. During the inspection the following violations of WV Legislative Rules, and the terms and conditions of Metalcraft's WV/NPDES permit were observed and documented:
  - a. There are approximately sixty (60) drums of used oil currently stored on site without proper secondary containment, a violation of Legislative Rule Title 47, Series 58, Section 4.7.d (47CSR58-4.7.d).
  - b. The secondary containment provided for the primary used oil storage tank contains approximately eight (8) inches used oil, and therefore is serving as primary containment instead of secondary containment as designed, a violation of 47CSR58-4.8.a.
  - c. The treatment facility for process wastewater generated on this site has never been built. Process wastewater from the cleaning of mining equipment prior to repairs is discharged onto the ground and is then discharged directly to waters of the state without treatment, a violation of its permit (Appendix II.1.).
  - d. Facility does not have an outlet marker posted as required, a violation of its permit (Appendix I.13.).

As a result of the aforementioned violations, Notice of Violation (NOV) No. I09-35-090902-3-JKL, and NOV No. I0935-090902-4-JKL was issued to Metalcraft.

7. Metalcraft responded to the inspection by performing the following tasks:
  - a. removing and taking to a scrap metal facility the sixty (60) drums of used oil.
  - b. replacing the function of those drums with a double walled used oil storage tank for used oil management.
  - c. removing and taking to a scrap metal facility the previous used oil tank.

- d. informing employees that the facility is not permitted for washing of mining equipment and educating that such activity is prohibited.
8. On November 5, 2010, WVDEP personnel conducted a file review for the facility. During the review, it was observed and documented that Metalcraft had submitted a DMR for the year 2009 as required by the terms and conditions of its permit. There was a note on the DMR that stated, "Building of facility has not began. Therefore no outfall."
9. On February 4, 2011, WVDEP personnel and representatives of Metalcraft 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. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Metalcraft shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of entry of this Order, Metalcraft shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Metalcraft will achieve compliance with all terms and conditions of its WV/NPDES permits and/or pertinent laws and rules. The plan of corrective action shall be submitted to:

**Environmental Inspector Supervisor  
SE Regional Environmental Enforcement Office  
116 Industrial Drive  
Oak Hill, WV 25901**

A copy of this plan 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 Metalcraft's Legislative Rule and permit violations, Metalcraft shall be assessed a civil administrative penalty of eleven thousand three hundred thirty dollars (\$11,330) 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

**OTHER PROVISIONS**

1. Metalcraft 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, Metalcraft 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, Metalcraft 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 Metalcraft 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, Metalcraft 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 Metalcraft 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 Metalcraft 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 Metalcraft (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 Metalcraft 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 Metalcraft 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 Metalcraft, its successors and assigns.
7. This Order shall terminate upon Metalcraft's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

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Harley McClung, President  
Metalcraft Mining Equipment Rebuilders, Inc.

\_\_\_\_\_  
Date

Public Notice begin: \_\_\_\_\_  
Date

Public Notice end: \_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date