

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

TO: Mike Conant
Go Mart Inc.
915 Riverside Dr.
Gassaway, WV 26624

DATE: July 9, 2010

ORDER NO.: 6893

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 Go Mart Inc. Store #043 (hereinafter "Go Mart #043").

FINDINGS OF FACT

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

1. Go Mart #043 operates a truck stop and fueling station located in Teays, Putnam County, West Virginia. Go Mart #043 was issued WV/NPDES Water Pollution Control Permit No. WV0111457, General Permit Registration No. WVG610335 on June 9, 2004 and WV/NPDES General Water Pollution Control Permit No. WV0113727, General Permit Registration No. WVG910078 on April 14, 2008.
2. On January 10, 2008, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the Go Mart #043 fueling station and documented the following violation of West Virginia Code and issued Notice of Violation (NOV) #108-40-002-JHH:
 - a. Go Mart #043 violated West Virginia Code 22-11-8(b)(1) by allowing industrial wastewater to enter the waters of the state without a permit.
3. On March 28, 2008, WVDEP personnel conducted an inspection of the Go Mart #043 fueling station and documented that violations addressed in NOV #108-40-002-JHH had not been corrected.
4. On April 21, 2008, the WVDEP Environmental Enforcement Southwest Regional Office in Teays, WV received a document from Enviroprobe Integrated Solutions Inc. dated April 18, 2008. This document was addressed to Tom Ferguson regarding a "Work Plan to Address Notice of Violation – January 10, 2008" for "Go-Mart Store #043". Section 1.1 Response to NOV's on page 2 under Violation #108-40-002-JHH document language states that "*Go-Mart is in the process, through the assistance of Enviroprobe, in determining the most satisfactory means of directing stormwater on the northern property line to the oil/water separator (OWS).*"

5. On April 22, 2009, WVDEP personnel conducted an inspection of the Go Mart #043 fueling station and documented the following violations of its WV/NPDES permit and or West Virginia Code and issued NOV #109-40-087-JHH:

- a. Go Mart #043 violated WV Code 22-11-8(b) (1) by allowing industrial waste water to enter the waters of the state without a permit.

The stormwater from the northern property line is not going to the oil/water separator.

6. On August 5, 2009, Go-Mart submitted the 2nd and 3rd quarter Discharge Monitoring Reports (DMRs) to WVDEP/Division of Water and Waste Management.
7. WVDEP personnel conducted a file review of the Discharge Monitoring Reports (DMRs) submitted by Go Mart #43 as required by WV/NPDES Permit No. WV0113727, General Permit Registration No. WVG910078. The date range of this file review is from January 2008 through March 2010. WVDEP personnel documented 4 discharge limit excursions, all violations of its WV/NPDES permit. The violations can be further described as:
 - a. Violations of Average Monthly Permit Limits by $\leq 40\%$ and/or Maximum Daily Permit Limits by $\leq 100\%$: Mn, Concentration = 2 violations.
 - b. Violations of Average Monthly Permit Limits by $> 40\%$ and $\leq 300\%$ and/or Maximum Daily Permit Limit by $> 100\%$ and $\leq 600\%$: Mn, Concentration = 2 violations.
8. On January 25, 2010, Go-Mart representatives met with WVDEP personnel to discuss draft Order No. 6893. During the meeting, Go-Mart provided that the curbing at the site had been repaired/installed in May of 2009 and that this curbing should direct all flows from the fueling/immediate store area to Outlet 001. When asked about the tractor/trailer parking area, Go-Mart positioned that this area is exempt in accordance with the Code of Federal Rules, Title 40, Part 122, Section 26.B.14. (40CFR122-26.B.14.).
9. Subsequent to the January 25, 2010 meeting, WVDEP personnel reviewed the information from Go-Mart and have determined that the parking areas identified in 40CFR122-26.B.14. refer to areas for the temporary parking of employees while working. Therefore, this exemption does not apply to the staging area for over-the-road tractor/trailers as they cycle through the industrial activity carried on at its facility. As such, Go-Mart must address the runoff from this area within its WV/NPDES permit.

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. Go Mart #043 shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permits.
2. Within thirty (30) days of entry of this Order, Go Mart #043 shall submit for approval a proposed corrective action plan and schedule, outlining how and when Go Mart #043 will

achieve compliance with all terms and conditions of the permits and/or pertinent laws and rules.

3. Because of Go Mart #043's West Virginia Code and permit violations, Go Mart #043 shall be assessed a civil administrative penalty of twelve thousand dollars (\$12,000) 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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Go Mart #043 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, Go Mart #043 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, Go Mart #043 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 Go Mart #043 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, Go Mart #043 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 Go Mart #043 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 Go Mart #043 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 Go Mart #043 (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 Go Mart #043 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 Go Mart #043 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 Go Mart #043, its successors and assigns.

7. This Order shall terminate upon Go Mart #043's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Mike Conant
Go Mart Inc.



Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Go Mart #043

Receiving Stream:

Poplar Fork

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	5a	6a	6b											
a)	Amount of Pollutant Released	1 to 3	1	1	1	1											
b)	Toxicity of Pollutant	0 to 3	1	1	1	1											
c)	Sensitivity of the Environment	0 to 3	1	1	1	1											
d)	Length of Time	1 to 3	1	3	1	1											
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1											
Average Potential for Harm Factor			1	1.4	1	1	No										
2)	Extent of Deviation Factor	Factor Range															
	Degree of Non-Compliance	1 to 3	3	3	1	2											

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.

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		\$1,140
6.2.b.4 - Compliance/noncompliance history	15		\$1,710
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	(\$1,140)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,140)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$600
Penalty =			\$12,000

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: None determined.	