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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  
Phone: (304) 926-0495  
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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

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

TO: Intercontinental Export Import, Inc.  
Jeff D'Costa  
1624 Staunton Avenue  
Parkersburg, WV 26101

DATE: March 10, 2015

ORDER NO.: 7802

**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 Intercontinental Export Import, Inc. (hereinafter "IEI").

**FINDINGS OF FACT**

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

1. IEI operates a warehouse for off grade nylon, polyester, polycarbonate, cellulose, polybutylene phthalate, acrylic, thermoplastic elastomer, polypropylene, polyethylene, acetal, polyvinyl chloride, and chlorinated polyethylene in the form of lumps, pellets, fiber, and resins (powder) in Parkersburg, Wood County, West Virginia. IEI uses extruders to produce underwater or rod cut pellets focusing on unfilled and glass or mineral filled engineering resins. IEI also provides a full range of recycling and blends feedstock and finished products for uniformity. The previous owner of the facility, Ames True Temper, closed in place an underground storage tank that has shown evidence of the release of trichloroethylene, lead, ethylbenzene, and toluene to soil and groundwater. IEI was issued WV/NPDES Water Pollution Control Permit No. WV0003204 on May 28, 2009 for regulated activities at Plant No. 1. The WV/NPDES permit was reissued on July 23, 2014.
2. On May 16, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of IEI's Plant No. 1 facility. During the inspection, the following violations of WV State Code and IEI's WV/NPDES Permit were documented:

- a. Appendix A.III.2 and Section C.06 - Discharge monitoring reports had not been submitted since 2009.
- b. Section C.01 - Good housekeeping was not being maintained. Specifically, IEI stored off grade nylon, polyester, polycarbonate, cellulose, polybutylene phthalate, acrylic, thermoplastic elastomer, polypropylene, polyethylene, acetal, polyvinyl chloride, and/or chlorinated polyethylene in the form of lumps, pellets, fiber, and/or resins (powder) in locations and/or containers that have a potential to allow the material to contact stormwater and/or floor wash water.
- c. Section C.18 - The facility failed to record and report flow for each outlet in Sections A.001 and A.004. The permittee failed to install a flow measurement device.
- d. Appendix A.I.13 - The permittee failed to install outlet markers at both outlets.
- e. Section A - From July 2009 to May 2011, IEI failed to collect any required samples.
- f. Section C.11 - The permittee failed to properly develop and maintain on-site a groundwater protection plan (GPP) that included materials stored at the site.
- g. Section C.15 - A storm water pollution prevention plan (SWPPP) had not been developed and implemented.
- h. Section C.19 - A plan of action for obtaining compliance with the final effluent limitation for phthalate esters at Outlet 001 and quarterly progress reports had not been submitted.
- i. Section C.20 - A plan of action for obtaining compliance with the final effluent limitations for vinyl chloride and trichloroethylene at Outlet 004 and quarterly progress reports had not been submitted.
- j. 22-11-8 - An unpermitted outlet was observed.

As a result of the aforementioned violations, Notice of Violation (NOV) No. I11-54-005-CJM was issued to IEI.

3. On June 13, 2011, WVDEP issued Order No. 7377 to IEI. The Order required that IEI immediately initiate actions necessary for the submission of an administratively complete application for registration under the WV/NPDES General Permit for Storm Water Associated with Industrial Activities at its Ames Plant No. 2 facility. IEI has not applied for the required WV/NPDES permit and has, therefore, failed to comply with Order No. 7377, a violation of WV State Code 22-11-1 et seq.
4. On August 14, 2012, WVDEP personnel conducted an inspection of IEI's Plant No. 1 facility. The following violations of WV State Code and IEI's WV/NPDES Permit were documented:
  - a. Section A - From July 2009 through August 2012, IEI failed to collect any of the required samples.
  - b. Appendix A.III.2 and Section C.06 - Discharge monitoring reports had not been submitted since 2009.
  - c. Section C.01 - Good housekeeping was not being maintained. Specifically, IEI stored off grade nylon, polyester, polycarbonate, cellulose, polybutylene phthalate, acrylic, thermoplastic elastomer, polypropylene, polyethylene, acetal, polyvinyl chloride, and/or chlorinated polyethylene in the form of lumps, pellets, fiber, and/or resins (powder) in locations or containers that have a potential to allow the material to contact stormwater and/or floor wash water.

- d. Section C.18 - The facility failed to record and report flow for each outlet in Sections A.001 and A.004. The permittee failed to install a flow measurement device.
- e. Appendix A.I.13 - The permittee failed to install outlet markers at both outlets.
- f. Section C.11 - The permittee failed to properly develop and maintain on-site a GPP that included materials stored at the site.
- g. Section C.15 - A SWPPP had not been developed and implemented.
- h. Section C.19 - A plan of action for obtaining compliance with the final effluent limitation for phthalate esters at Outlet 001 and quarterly progress reports had not been submitted.
- i. Section C.20 - A plan of action for obtaining compliance with the final effluent limitations for vinyl chloride and trichloroethylene at Outlet 004 and quarterly progress reports had not been submitted.
- j. 22-11-8 - An unpermitted outlet was observed.
- k. Appendix A.II.1 - Maintenance was needed on drop-inlets and the sedimentation tank.
- l. Plastic pellets were observed at Outfall 001.

As a result of the aforementioned violations, NOV Nos. I12-54-052-GMP, I12-54-053-GMP, I12-54-054-GMP, and I12-54-055-GMP were issued to IEI.

5. On August 14, 2012, WVDEP personnel conducted an inspection of IEI's unpermitted former Ames Plant No. 2 facility. The following violations were documented:
  - a. Overall housekeeping and controls for the plastic pellets was needed.
  - b. The facility did not comply with Order No. 7377 by failing to apply for and obtain a WV/NPDES permit. Failure to comply with an Order is a violation of WV State Code 22-11-1 et seq.

As a result of the aforementioned violations, NOV No. I12-54-051-GMP was issued to IEI.

6. On November 28, 2012, IEI's WV/NPDES Permit was voided due to non-payment of Annual Permit and Groundwater Protection fees. Upon a record review, WVDEP personnel determined that IEI owed five thousand fifty dollars (\$5,050) in past due fees.
7. On March 14, 2013 and April 2, 2013, IEI paid all past due Annual Permit and Groundwater Protection fees.
8. On April 18, 2013, IEI's WV/NPDES permit was reinstated due to payment of all past due Annual Permit and Groundwater Protection fees.
9. On May 13, 2013, September 4, 2013, September 26, 2013, and August 25, 2014, WVDEP and IEI met to discuss the terms and conditions of this Order.
10. On February 12, 2015, WVDEP personnel conducted a review of facility records from the time period of May 2009 through January 2015. During this review, the following violations of the terms and conditions of IEI's WV/NPDES permit were observed:

- a. Sections A.001 and A.004 – Six (6) exceedances of IEI's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
  - i. Minor violations-four (4)
  - ii. Moderate violations-two (2)
- b. Appendix A.III.2 and Section C.06 - IEI failed to submit DMRs within twenty (20) days following the end of the reporting period. Specifically, aside from May 2009 DMRs for Outlet No. 004, no DMRs had been submitted by IEI prior to March 2013. Since that time, April, September, October, and November 2013 and March 2014 DMRs were not submitted.

### **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. IEI shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, IEI shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when IEI will achieve compliance with all terms and conditions of its WV/NPDES permit and/or pertinent laws and rules. The plan of corrective action shall include, but not be limited to, the following:
  - a. Provisions for obtaining compliance with final effluent limitations for phthalate esters at Outlet No. 001 and for submitting quarterly progress reports thereafter, as described in Section C.19 of the WV/NPDES permit.
  - b. Provisions for obtaining compliance with final effluent limitations for vinyl chloride and trichloroethylene at Outlet No. 004 and for submitting quarterly progress reports thereafter, as described in Section C.20 of the WV/NPDES permit.

The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
SW Regional Environmental Enforcement Office  
P.O. Box 662  
Teays, WV 25569**

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. Within thirty (30) days of the effective date of this Order, IEI shall either eliminate the unpermitted discharge observed at its Plant No. 1 facility, or submit an administratively complete WV/NPDES permit modification application to include the aforementioned discharge.
4. Upon the effective date of this Order, IEI shall commence submittal of quarterly progress reports until such time when IEI has achieved full compliance with all terms and conditions of the WV/NPDES permit.
5. Within thirty (30) days of the effective date of the Order, IEI shall initiate proper flow measurement and reporting at Outlets 001 and 004, as described in section C.18 of the WV/NPDES permit. At a minimum, flow measurement devices shall be installed at locations that are capable of measuring all wastewater discharged through Outlets 001 and 004, and either by calculation or direct measurement, allow the operator to report the volume per day (total flow) in accordance with the prescribed reporting units in the WV/NPDES permit.
6. Within thirty (30) days of the effective date of the Order, IEI shall revise its SWPPP. The SWPPP shall include material stored at the site attributable to the storage of off-grade nylon, polyester, polycarbonate, cellulose, polybutylene phthalate, acrylic, thermoplastic elastomer, polypropylene, polyethylene, acetal, polyvinyl chloride, and chlorinated polyethylene in the form of lumps, pellets, fiber, and resins (powder). The SWPPP shall be prepared in accordance with good engineering practices and shall identify any and all point source discharges on facility grounds and all potential sources of pollution (ex. outdoor material storage areas, equipment storage areas, etc.) from areas which may reasonably be expected to affect the quality of storm water that may discharge to waters of the State. In addition, the plan shall describe the implementation of practices which will be used to reduce pollutants in storm water discharges associated with industrial activity at the facility and assure compliance with the terms and conditions of this permit.

This document shall be retained at the site for review upon request, and a copy shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
SW Regional Environmental Enforcement Office  
P.O. Box 662  
Teays, WV 25569**

A copy of the SWPPP shall also be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

7. Within thirty (30) days of the effective date of this Order, IEI shall revise its GPP. The GPP shall include material stored at the site attributable to the storage of off grade nylon, polyester, polycarbonate, cellulose, polybutylene phthalate, acrylic, thermoplastic elastomer, polypropylene, polyethylene, acetal, polyvinyl chloride, and chlorinated polyethylene in the form of lumps, pellets, fiber, and resins (powder). This document shall be retained at the site for review upon request, and a copy shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
SW Regional Environmental Enforcement Office  
P.O. Box 662  
Teays, WV 25569**

A copy of the GPP shall also be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

8. Upon the effective date of this Order, IEI shall comply with the Final Order Limitations, as outlined in the attached DMR. The limits shall expire two (2) years after the effective date of this Order, at which time IEI shall achieve compliance with the limits contained within its WV/NPDES permit, and stipulated penalties shall become effective in accordance with Order for Compliance Paragraph No. Ten (10).
9. IEI agrees to the following stipulated penalties for each violation of its WV/NPDES permit limits. The stipulated penalties shall become effective two (2) years after the effective date of this Order and shall remain in effect for a period of three (3) years or until IEI demonstrates that it has achieved compliance with its WV/NPDES permit requirements for four (4) consecutive months, on a per parameter basis. Upon achieving full compliance with any permitted parameter limit for four (4) consecutive months, IEI shall provide written notification of its compliance to the Chief Inspector.

**Stipulated Penalties**

Total No. Daily Max Violations	Minor (≤100% exceedance)	Moderate (101-600% exceedance)	Major (>600% exceedance)
1 thru 10	\$1000	\$1500	\$2000
11 thru 20	\$1250	\$1750	\$2250
21 and greater	\$1500	\$2000	\$2500

Total No. Monthly Avg Violations	(≤40% exceedance)	(41-300% exceedance)	(>300% exceedance)
1 thru 5	\$2000	\$3000	\$4000
6 thru 10	\$2500	\$3500	\$4500
11 and greater	\$3000	\$4000	\$5000

Stipulated penalties shall be paid automatically, without demand, to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within ten (10) days of reporting violations on discharge monitoring reports. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. Payments and/or written notifications shall be mailed to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57th Street SE  
Charleston, WV 25304**

10. Because of IEI's West Virginia Code and WV/NPDES permit violations, IEI shall be assessed a civil administrative penalty of eighty thousand eight hundred thirty dollars (\$80,830). Sixty thousand six hundred twenty-two dollars and fifty cents (\$60,622.50) of the civil administrative penalty shall be held in abeyance for a five (5) year period pending proper submittal of Discharge Monitoring Reports (DMRs), as required by Appendix A.III.2 of the WV/NPDES permit. The remaining twenty thousand two hundred seven dollars and fifty cents (\$20,207.50) of the civil administrative penalty shall be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

- Payment 1 in the amount of \$1,683.95 due on or before May 1, 2015.
- Payment 2 in the amount of \$1,683.95 due on or before June 1, 2015.
- Payment 3 in the amount of \$1,683.95 due on or before July 1, 2015.
- Payment 4 in the amount of \$1,683.95 due on or before August 1, 2015.
- Payment 5 in the amount of \$1,683.95 due on or before September 1, 2015.
- Payment 6 in the amount of \$1,683.95 due on or before October 1, 2015.
- Payment 7 in the amount of \$1,683.95 due on or before November 1, 2015.
- Payment 8 in the amount of \$1,683.95 due on or before December 1, 2015.
- Payment 9 in the amount of \$1,683.95 due on or before January 1, 2016.
- Payment 10 in the amount of \$1,683.95 due on or before February 1, 2016.
- Payment 11 in the amount of \$1,683.95 due on or before March 1, 2016.
- Payment 12 in the amount of \$1,684.05 due on or before April 1, 2016.

IEI agrees to pay the entire sixty thousand six hundred twenty-two dollars and fifty cents (\$60,622.50) held in abeyance within thirty (30) days of notice from WVDEP that IEI has failed to comply with the aforementioned DMR reporting requirements of Appendix A.III.2 of its WV/NPDES permit.

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  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. IEI 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, IEI 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, IEI 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 IEI 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, IEI 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 IEI 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 IEI 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 IEI (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 IEI 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 IEI 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 IEI, its successors and assigns.

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

  
\_\_\_\_\_  
Intercontinental Export Import, Inc.

4/6/15  
\_\_\_\_\_  
Date

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

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

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

\_\_\_\_\_  
Date

**RECEIVED**

APR 13 2015

**ENVIRONMENTAL  
ENFORCEMENT**

Table One: IEI DMR Exceedance Summary

Outlet 004 DMR Exceedances - MAX. DAILY - 5/09 - 1/15						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
12/31/2013	Vinyl Chloride	ug/l	2	2.78	39%	X	-	-
2/28/2014	Vinyl Chloride	ug/l	2	3.5	75%	X	-	-
12/31/2013	Trichloroethylene	ug/l	2.7	3.62	34%	X	-	-
2/28/2014	Trichloroethylene	ug/l	2.7	5.63	109%	-	X	-
4/30/2014	Trichloroethylene	ug/l	2.7	5.77	114%	-	X	-
6/30/2014	Trichloroethylene	ug/l	2.7	5.03	86%	X	-	-

Outlet 004 Totals	Degree of non-compliance		
	Min	Mod	Maj
	4	2	0

FACILITY NAME: (JFI Plant Number #1) INTERCONTINENTAL EXPORT IMPORT, INC. CERTIFIED LABORATORY NAME: \_\_\_\_\_  
 LOCATION OF FACILITY: PARKERSBURG, Wood County CERTIFIED LABORATORY ADDRESS: \_\_\_\_\_  
 PERMIT NO.: WV0003204 OUTLET NO.: 004  
 WASTELOAD FOR THE MONTH OF: \_\_\_\_\_

INDIVIDUAL PERFORMING ANALYSIS:

Parameter	Quantity	Other Units		Measurement Frequency	Sample Type
		Units	N.E.		
50950 (ML-1) RF-A Flow in Conduit at this plant Year Round	N/A	Rpt Only Avg Monthly	Rpt Only Max Daily	1/week	Estimated
00530 (ML-1) RF-B Total Suspended Solids Year Round	N/A	Rpt Only Avg Monthly	Rpt Only Max Daily	1/quarter	Grab
00400 (ML-1) RF-A pH Year Round	N/A	N/A	9 Inst Max	1/month	Grab
01114 (ML-1) RF-A Lead, Total Recoverable Year Round	N/A	2.6 Avg Monthly	5.2 Max Daily	1/month	Grab
00980 (ML-1) RF-A Iron, Total Recoverable Year Round	N/A	1.2 Avg Monthly	2.2 Max Daily	1/month	Grab
39175 (ML-1) RF-A Vinyl Chloride Year Round	N/A	Rpt Only Avg Monthly	Rpt Only Max Daily	1/month	Grab
38180 (ML-1) RF-A Trichloroethylene Year Round	N/A	Rpt Only Avg Monthly	Rpt Only Max Daily	1/month	Grab
34501 (ML-1) RF-A 1,1-Dichloroethylene Year Round	N/A	Rpt Only Avg Monthly	Rpt Only Max Daily	1/month	Grab

\* CEL = Compliance Evaluation Level

Name of Principal Executive Officer	Date Completed
Title of Officer	Signature of Principal Executive Officer or Authorized Agent

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of a fine and imprisonment for knowing violations.



# IEI Plant No. 1 - Permit Registration No. WV0003204



**Outside material storage**



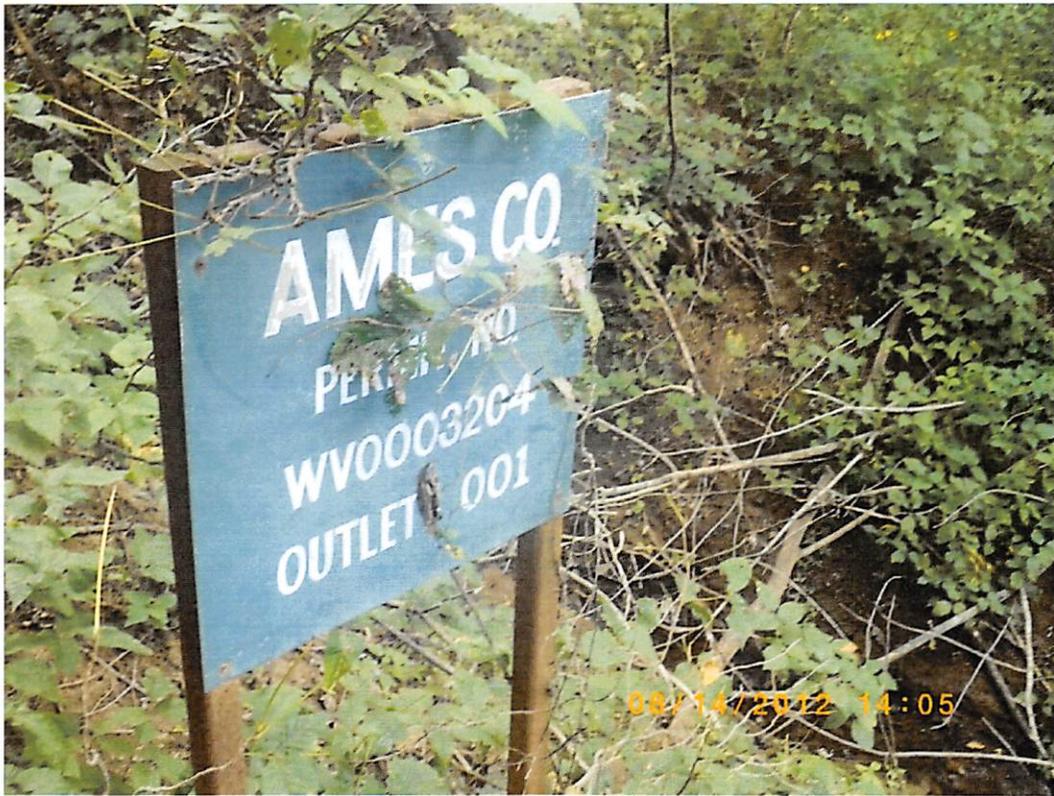
**Inside material exposed to stormwater**



**Stormwater allowed to saturate materials inside storage building**



**Unloading docks needed housekeeping**



**Outlet markers needed updated to reflect new ownership**



**Plastic pellets evident at Outfall 001**



**Contaminated drop inlet inside warehouse**



**Spillage of material in direct contact with stormwater**



**Drums without secondary containment**



**Outside storage**



**Poor housekeeping**



**Poor housekeeping**

## IEI Plant No. 2 - Unpermitted



**Cleanup for recent fire**



**Sump created during fire**



**Fine pieces of material throughout site**



**Fine pieces of material around site**



**Dumpsters for fire cleanup**

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Intercontinental Export Import, Inc Receiving Stream: Little Kanawha River

Treatment System Design Maximum Flow: 0.1 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	4c	4d	4e	4f	4g	4h	4i	4j	4k	5b		
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1	1	1	1		
b)	Toxicity of Pollutant	0 to 3	0	1	0	0	0	0	0	0	0	1	0		
c)	Sensitivity of the Environment	0 to 3	0	1	0	0	0	0	0	0	0	1	0		
d)	Length of Time	1 to 3	1	2	2	2	2	2	2	2	2	1	2		
e)	Actual Exposure and Effects thereon	0 to 3	0	1	0	0	0	0	0	0	0	1	0		
<b>Average Potential for Harm Factor</b>			0.4	1.2	0.6	0.6	0.6	0.6	0.6	0.6	0.6	1	0.6	No	No
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>													
	Degree of Non-Compliance	1 to 3	3	3	2	1	3	3	2	2	3	2	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	\$1,700	32	\$54,400
4c	Moderate	Major	\$4,200	1	\$4,200
4d	Minor	Moderate	\$1,300	1	\$1,300
4e	Minor	Minor	\$600	1	\$600
4f	Minor	Major	\$1,800	1	\$1,800
4g	Minor	Major	\$1,800	1	\$1,800
4h	Minor	Moderate	\$1,300	1	\$1,300
4i	Minor	Moderate	\$1,300	1	\$1,300
4j	Minor	Major	\$1,800	1	\$1,800
4k	Minor	Moderate	\$1,500	1	\$1,500
5b	Minor	Major	\$1,800	1	\$1,800
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>\$71,800</b>

## 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 -			\$0
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$9,000		\$9,000
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			\$0
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$9,030</b>
<b>Penalty =</b>			<b>\$80,830</b>

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$9,000
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>\$9,000</b>
<b>Comments:</b> Avoided sample costs. Prices based upon two (2) years of non-submittal.	