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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) 926-0470  
Fax: (304) 926-0488

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

**CONSENT ORDER  
ISSUED UNDER THE  
WATER POLLUTION CONTROL AND GROUNDWATER PROTECTION ACTS  
WEST VIRGINIA CODE CHAPTER 22, ARTICLES 11 AND 12**

TO: JennChem, LLC  
Mr. John Calandra and Mr. Frank Calandra  
599 Jennmar Drive  
Reedsville, WV 26547

DATE: January 19, 2024

ORDER NO.: 10244

**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 22-11-1 et seq. and 22-12-1 et seq. to JennChem, LLC (hereinafter "JennChem").

**FINDINGS OF FACT**

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

1. JennChem operates a chemical warehouse located in Reedsville, Preston County, West Virginia.
2. On March 31, 2022, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia Legislative Rules were observed and documented:
  - a. 47CSR58 Section 4.4.1 – Jennchem failed to have spill prevention and control facilities and secondary containment. Unlabeled totes and drums which contained chemicals were stored outside without secondary containment.
  - b. 47CSR58 Section 4.7.4 – Jennchem failed to properly store containers of petroleum products and/or chemical mixtures in a manner to contain leaks or spills. Damaged and deteriorated containers were leaking onto the ground. Spillage had flowed over the hill and collected in the ditch.

Promoting a healthy environment.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W22-39-028-TPD was issued to JennChem.

3. On July 18, 2022, WVDEP personnel met with representatives of JennChem to answer questions about the WV/NPDES permit registration for the facility.
4. On August 29, 2023, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia State Code and Legislative Rules were observed and documented:
  - a. 22-11-8(b)(2) - Jennchem created an outlet for the discharge of pollutants into waters of the State without a WVNPDES permit. A petroleum product was being discharged into a storm drain that leads to waters of the State.
  - b. 47CSR58 Section 4.4.1 - Jennchem failed to have spill prevention and control facilities and secondary containment. Unlabeled totes and drums which contained chemicals were stored outside without secondary containment.
  - c. 47CSR58 Section 4.7.4 - Jennchem failed to properly store containers of petroleum products and/or chemical mixtures in a manner to contain leaks or spills. Petroleum staining from leaking containers was present on the ground throughout the site.
  - d. 47CSR58 Section 7.1 - Jennchem allowed petroleum products and/or chemical mixtures that may impact ground water quality to flow onto the ground in a manner that could impact groundwater quality. In addition to petroleum spillage throughout the site, a dumpster was leaking an unknown liquid onto the ground.

As a result of the aforementioned violations, NOV Nos. W23-39-148-LCT and GW23-39-144-LCT were issued to JennChem.

5. On January 5, 2024, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia State Code and Legislative Rules were observed and documented:
  - a. 22-11-8(b)(1) - Jennchem discharged pollutants into waters of the State without a WVNPDES permit. The discharge of pollutants from the facility's unpermitted stormwater outlet resulted in petroleum sheens/oily slicks in waters of the State. In addition, a dye test conducted by WVDEP personnel confirmed that the discharge into the facility's storm drain ultimately enters waters of the State.
  - b. 47CSR2 Section 3.2.a – Jennchem caused conditions not allowable by creating petroleum sheens/oily slicks in waters of the State.
  - c. 47CSR11 Section 2.5.a – Jennchem did not take any measures necessary to clean up, remove, and otherwise render the petroleum spill/discharge harmless to waters of the state.
  - d. 47CSR11 Section 2.2.a – Jennchem failed to provide immediate notification of the discharge of pollutants into waters of the State.
  - e. 47CSR58 Section 4.7.4 – Jennchem failed to properly store several containers of petroleum products and/or chemical mixtures in a manner to contain leaks/spills.
  - f. 47CSR58.4.4.1 – Jennchem failed to have spill prevention and control facilities and secondary containment.

As a result of the aforementioned violations, NOV Nos. W24-39-001-LCT and GW24-39-002-LCT were issued to JennChem.

**ORDER FOR COMPLIANCE**

Now, therefore, in accordance with West Virginia State Code 22-11-1 et seq. and 22-12-1 et seq., it is hereby agreed between the parties, and ORDERED by the Director:

1. JennChem shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, JennChem shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when JennChem will achieve compliance with all pertinent laws and rules. The plan of corrective action shall include, but shall not be limited to, provisions for delineating all petroleum-contaminated soil at the facility; properly remediating all soil that is identified as being contaminated with petroleum product; providing proof of proper disposal of all petroleum-contaminated soil; and providing sample results confirming that proper remediation has been fully achieved. The plan of corrective action shall make reference to Order No. 10244. The plan of corrective action 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 twenty (20) days of the effective date of this Order, JennChem shall electronically submit an administratively complete application for WV/NPDES permit coverage for the regulated activity. Any questions regarding the application process shall be directed to WVDEP DWWM-Permitting Section at (304) 926-0495.
4. Because of JennChem's West Virginia Code and Legislative Rule violations, JennChem shall be assessed a civil administrative penalty of twelve thousand ninety dollars (\$12,090) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

**OTHER PROVISIONS**

1. JennChem hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21 and 22-12-11. Under this Order, JennChem 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, JennChem 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 JennChem 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, JennChem 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 JennChem becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and JennChem 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 JennChem 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 JennChem (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 JennChem 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 JennChem 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 JennChem, its successors and assigns.
7. This Order shall terminate upon JennChem's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

\_\_\_\_\_  
Mr. John Calandra and Mr. Frank Calandra  
JennChem

\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

T. H. Elliott  
Tyler H. Elliott  
Corporate Field Safety Manager  
JENNCHEM, LLC

4/3/2024  
Date

**Photo Log**



03/31/22 Spills on the ground and unlabeled totes and drums without secondary containment.



03/31/22 Unlabeled totes without secondary containment and spills on the ground.





03/31/22 Old drums and deteriorating containers without secondary containment.



03/31/22 Damaged containers leaking onto ground.



03/31/22 Damaged plastic containers leaking solids onto ground.



03/31/22 Totes and drums without secondary containment.





03/31/22 Burned and melted substance on concrete and on ground.



03/31/22 Spill going over hill.



08/29/23 Petroleum product spilling into storm drain that discharges to waters of the State.



08/29/23 Totes with product and without secondary containment.





08/29/23 Petroleum staining and tote with product and without secondary containment.



08/29/23 Petroleum staining.





08/29/23 Drums and totes with product and without secondary containment.



08/29/23 Unknown liquid leaking from dumpster and petroleum staining.



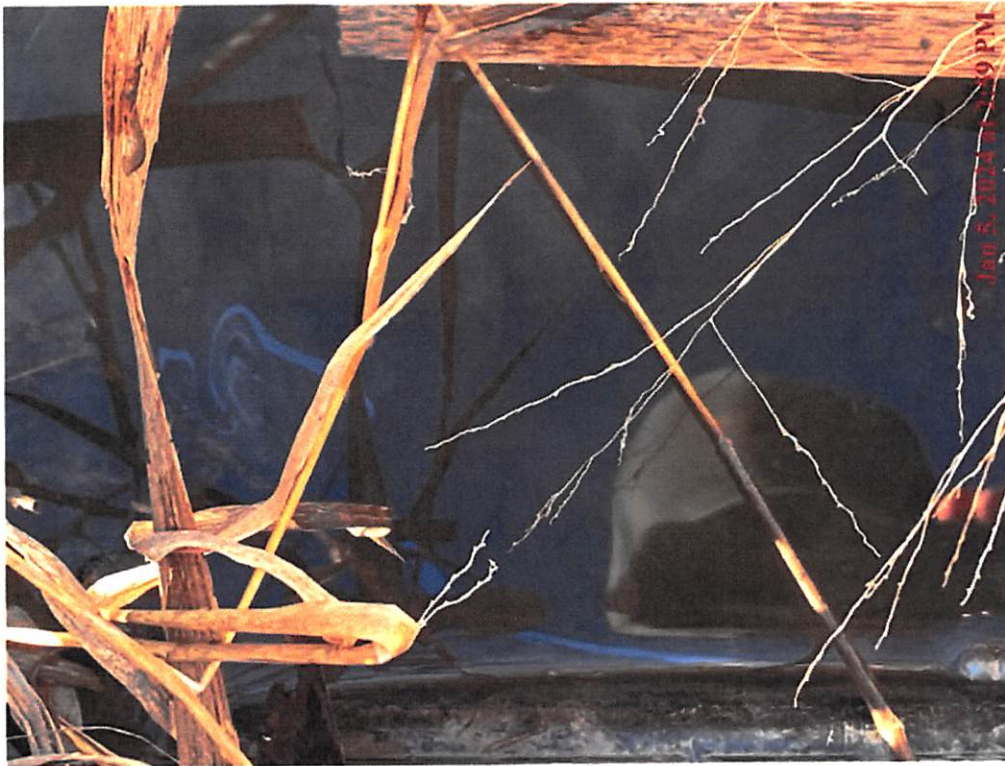


01/05/24 Green dye was put in the storm drain.



01/05/24 Green dye being discharged into waters of the state.





01/05/24 A petroleum sheen was discharging from a culvert into waters of the state.



01/05/24 A petroleum sheen was discharging from a culvert into waters of the state.





01/05/24 Containers with product were without secondary containment.



01/05/24 Containers with product did not have adequate secondary containment.

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:**

JennChem

**Receiving Stream:**

Kanes Creek/Decker's  
Creek/Monongahela River

**Treatment System Design Maximum Flow:** \_\_\_\_\_ 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#														
			4a, 5a	5b	5c	5d											
a)	Amount of Pollutant Released	1 to 3	1	1	1	1											
b)	Toxicity of Pollutant	0 to 3	1	1	1	0											
c)	Sensitivity of the Environment	0 to 3	1	1	1	0											
d)	Length of Time	1 to 3	2	1	1	1											
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	0											
<b>Average Potential for Harm Factor</b>			1.2	1	1	0.4	No	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	3	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.







## 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		\$990
6.2.b.4 - Compliance/noncompliance history -			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,170		\$1,170
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>\$2,190</b>
<b>Penalty =</b>			<b>\$12,090</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	\$1,170
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$1,170</b>
<b>Comments:</b> Avoided cost of WV/NPDES permit application fee.	