



west virginia department of environmental protection

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
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12
AND THE
SOLID WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 15**

TO: Preston Sanitation Inc.
Richard Rhodes, Owner
PO Box 517, 713 Gibson Street
Tunnelton, WV 26444

DATE: July 1, 2015

ORDER NO.: MM-15-14

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., Chapter 22, Article 12, Section 1 et seq., and Chapter 22, Article 15, Section 1 et seq. to Preston Sanitation Inc. (hereinafter "Preston Sanitation").

FINDINGS OF FACT

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

1. Preston Sanitation is a solid waste transporter with a facility located in Tunnelton, Preston County, West Virginia. Preston Sanitation was issued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG611397, on July 1, 2009. That permit expired on December 31, 2014.
2. On June 8, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, it was observed that Preston Sanitation was operating a nearby facility without authorization pursuant to a

Promoting a healthy environment.

valid WV/NPDES permit, a violation of WV Legislative Rule 47CSR10 Section 3.1 and WV State Code 22-11-8. Specifically, Preston Sanitation was storing roll-offs full of solid waste and improperly disposed pallets on the unpermitted area. During the inspection, violations of the following sections of the terms and condition of Preston Sanitation's WV/NPDES permit were observed and documented:

- a. Appendix A.I, II, and III - Preston Sanitation failed to properly manage, operate/maintain, and submit the required reports for the aforementioned site. Specifically, the following deficiencies were observed:
 - i. Oil, fuel, and hydraulic fluid spills were documented.
 - ii. Trash was on the ground.
 - iii. Wood chips were not properly disposed.
 - iv. Discharge Monitoring Reports (DMRs) were not submitted.
 - v. There was no outlet marker at the discharge point.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W-10-39-16-202 was issued to Preston Sanitation.

3. On May 14, 2012, Preston Sanitation submitted a request to modify its WV/NPDES permit to include the aforementioned unpermitted areas. The modification was approved by WVDEP personnel on August 9, 2012.
4. On June 12, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of its WV/NPDES permit were observed and documented:
 - a. Appendix A.II.1 - Preston Sanitation failed to properly operate and maintain the Preston Sanitation Garage. Specifically, the following deficiencies were observed:
 - i. Petroleum products were allowed to spill onto the ground, and petroleum spillage was not cleaned.
 - ii. Wind-blown solid waste was not picked up.
 - iii. Too many waste tires were accumulated.
 - iv. Pallets were being burned.

As a result of the aforementioned violations, NOV No. W-12-39-27-202 was issued to Preston Sanitation.

5. On September 11, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Preston Sanitation's WV/NPDES permit were observed and documented:
 - a. Appendix A.II.1 - Preston Sanitation failed to properly operate and maintain the Preston Sanitation Garage. Specifically, the following deficiencies were observed:
 - i. Petroleum products were allowed to spill onto the ground, and petroleum spillage was not cleaned.
 - ii. Too many waste tires were accumulated.

As a result of the aforementioned violations, NOV No. W-12-39-37-202 was issued to Preston Sanitation.

6. On January 30, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and WV Legislative Rule were observed and documented:
 - a. 22-11-8 and 47CSR10 Section 3.1 – Preston Sanitation failed to reapply for a new WV/NPDES permit in accordance with Appendix A.I.2.
 - b. 22-15-10(b) and 33CSR1 Section 1.6 – Preston Sanitation operated an unpermitted solid waste facility/staging area by transferring, storing and sorting solid waste at the Preston Sanitation Garage and adjacent properties located in/near Tunnelton.
 - c. 47CSR58 Section 7.1 - Preston Sanitation allowed leachate to run onto the land surface in a manner that could impact groundwater quality.
 - d. 22-15-10(a) and 33CSR1 Section 1.6 -Preston Sanitation created, contributed to and/or allowed an open dump to exist on the aforementioned property.

As a result of the aforementioned violations, NOV Nos. W-15-39-05-202, W-15-39-05-GRC, and W-15-39-04-202 were issued to Preston Sanitation.

7. On January 30, 2015, WVDEP personnel conducted a review of facility records from the time period of January 30, 2013 through January 30, 2015. During this review, WVDEP personnel determined that no DMRs had been submitted, a violation of Appendix A.III.2 of Preston Sanitation's WV/NPDES permit.

As a result of the aforementioned violation, NOV No. W-15-39-03-202 was issued to Preston Sanitation.

8. On April 6, 2015, Preston Sanitation was reissued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG611397.
9. On June 2, 2015, WVDEP personnel and representatives of Preston Sanitation 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., Chapter 22, Article 12, Section 1 et seq., and Chapter 22, Article 15, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Preston Sanitation 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, Preston Sanitation shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Preston Sanitation will achieve compliance

with all pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0111457, Registration No. WVG611397, and Order No. MM-15-14. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NE Regional Environmental Enforcement Office
22288 Northwestern Pike
Romney, West Virginia 26757-8005**

A copy of this plan shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th 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 Preston Sanitation's WV State Code, WV Legislative Rule, and WV/NPDES permit violations, Preston Sanitation shall be assessed a civil administrative penalty of eight thousand seven hundred fifty dollars (\$8,750) 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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Preston Sanitation hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21, Chapter 22, Article 12, Section 11, and/or Chapter 22, Article 15, Section 16 of the Code of West Virginia. Under this Order, Preston Sanitation 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, Preston Sanitation 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 Preston Sanitation 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, Preston Sanitation 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 Preston Sanitation becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Preston Sanitation 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 Preston Sanitation 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 Preston Sanitation (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 Preston Sanitation 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 Preston Sanitation 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 Preston Sanitation, its successors and assigns.

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


Richard Rhodes, Owner
Preston Sanitation Inc.

7-20-15
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

RECEIVED

JUL 27 2015

**ENVIRONMENTAL
ENFORCEMENT**

I have tried to contact Robin Dolly to find out about the corrective action plan that had been sent in long ago. I missed the part about sending this in 5 days. I thought it was to be sent with a check in 30 days. I don't know what this public notice thing is. Please let me know what I need to do. 

Photo Attachment
Preston Sanitation/ Richard Rhodes



1/22/15- one roll off box of five containing solid waste near cell phone tower in Tunnelton, Preston County, two more roll offs are located to the right of the photographer, with two more across the access road and behind the photographer, notice bags on ground on both sides of the box



1/22/15-two of five roll offs with solid waste near cell phone tower in Tunnelton, Preston County, with one other roll off to the left of photographer, and two more behind the photographer

Photo Attachment
Preston Sanitation/ Richard Rhodes



1/22/15-two more of five roll offs with solid waste near cell phone tower in Tunnelton, Preston County, with three roll offs behind photographer, there are four empty roll off boxes in this immediate location, also notice the tire tracks in the mud into the boxes and the solid waste on the ground near the boxes



1/22/15-solid waste on ground near roll off box, notice hole in lower corner of box and puddle box is sitting in

Photo Attachment
Preston Sanitation/ Richard Rhodes



1/22/15-close up of hole in roll off box and muddy area box is sitting area, notice roll off box on other side of access road



1/22/15-solid waste on ground near roll off boxes, these are the two grouped with the four empty boxes



1/22/15- box with open gate and weeds/brush growing up into it, solid waste looks like it was placed recently



1/22/15-solid waste on ground near roll off box

Photo Attachment
Preston Sanitation/ Richard Rhodes



1/30/15- tires, plastic, metal, vehicle parts, burned out trailers located on the Preston Sanitation site in Tunnelton, Preston County



1/30/15- box trailers with tires and other items on Preston Sanitation site in Tunnelton, Preston County, notice black drum in far left of photo



1/30/15- close up of contents in box trailer



1/30/15-close up of contents in other box trailer



1/30/2015- unlabeled, very full drum (black drum in previous picture)



1/30/15- another very full, unlabeled drum

Photo Attachment
Preston Sanitation/ Richard Rhodes



1/30/15- roll off box with tires and more unlabeled drums with varying levels of contents

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		\$880
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$800		\$800
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	(\$880)
6.2.b.3 - Cooperation with the Secretary		10	(\$880)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$50)
Penalty =			\$8,750

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$800
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	\$800
Comments: Avoided costs of sampling/submittal of 2 years of DMRs.	