



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
Fax: (304) 926-0488

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**

TO: SMC Electrical Products Inc.
Mr. Brent Pyles
P.O. Box 880
Barboursville, WV 25504

DATE: April 23, 2015

ORDER NO.: 8219

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 SMC Electrical Products Inc. (hereinafter “SMC”).

FINDINGS OF FACT

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

1. SMC operates a disposal system for the direct discharge of treated industrial wastes (Outlet No. 001) and a 2,500 GPD treatment plant (Outlet No. 101) located near Barboursville, Cabell County, West Virginia. SMC was reissued WV/NPDES Water Pollution Control Permit No. WV0115401 on October 24, 2007 and October 31, 2014.
2. On October 24, 2007, West Virginia Department of Environmental Protection (WVDEP) issued Order No. 6289 to SMC. The Order was issued in response to SMC’s continuous violations of its permitted iron and zinc effluent limits at Outlet 001. The Order provided one (1) year of “monitor only” interim iron and zinc effluent limits at Outlet 001 to allow time for implementation of SMC’s Plan of Corrective Action. Upon expiration of the interim limits, SMC was required to achieve compliance with the effluent limits in its WV/NPDES permit.
3. On May 14, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of SMC’s WV/NPDES permit was observed and documented:

- a. Section F - SMC failed to properly operate and maintain the facility. Specifically, floating solids were observed in the clarifier, chlorine contact chamber, and dechlorination unit.
4. On December 16, 2013, WVDEP issued Order No. 8002 to SMC. The Order was issued in response to SMC's submittal of Discharge Monitoring Reports (DMRs) with inaccurate analytical results. The Order required SMC to submit corrected DMRs, supporting analytical results, and a Plan of Corrective Action to WVDEP.
 5. On February 11, 2014, WVDEP personnel received a proposed Plan of Corrective Action from SMC in response to Order No. 8002. The Plan of Corrective Action represented that SMC had submitted the corrected DMRs and supporting analytical results. In addition, SMC represented that it had developed the Plan of Corrective Action in conjunction with its consultant, Richmorr and Associates, and a letter of explanation from Richmorr and Associates was included.
 6. On February 13, 2014, in a letter to SMC, WVDEP personnel stated that the proposed Plan of Corrective Action received on February 11, 2014 had not been approved due to the following deficiencies:
 - a. The letter of explanation from Richmorr and Associates was not signed.
 - b. The proposed method of having a Master Consultant enter the laboratory results, then having Richmorr and Associates review the analytical results from the E-DMR system before deciding whether additional samples should be taken was not efficient. It would be more efficient to have all necessary sampling completed prior to submittal to WVDEP.
 - c. The proposed Plan of Corrective Action did not address SMC's failure to accurately report its number of excursions and sample with the correct frequency.

SMC was instructed to, within ten (10) days, submit a revised Plan of Corrective Action that addressed the aforementioned deficiencies.

7. On March 11, 2015, WVDEP personnel and representatives of SMC met to discuss the terms and conditions of this Order.
8. On March 12, 2015, WVDEP personnel conducted a review of facility records from the time period of September 2012 through January 2015. During this review, the following violations of the terms and conditions of SMC's WV/NPDES permit were observed:
 - a. Section A.001 - Twenty-four (24) exceedances of SMC's permit parameters were observed and documented at Outlet No. 001 (Table 1). These exceedances can be further defined as:
 - i. Minor violations-one (1)
 - ii. Moderate violations-fifteen (15)
 - iii. Major violations-eight (8)
 - b. Section A.101 - Ten (10) exceedances of SMC's permit parameters were observed and documented at Outlet No. 101 (Table 2). These exceedances can be further defined as:

- i. Minor violations-five (5)
 - ii. Moderate violations-five (5)
 - c. Section A.001 - SMC failed to sample Flow, Iron, and Zinc twice per month at Outlet No. 001. On the following submitted DMRs, these parameters were only sampled once per month: September, October, November, and December, 2012; March, June, September, and December, 2013; and March and June, 2014.
 - d. Section A.001 – SMC failed to submit any DMRs for Flow, Iron, and Zinc within twenty (20) days after the following reporting periods: January, February, April, May, July, August, October, and November, 2013; and January, February, April, May, July, and August 2014.
9. On April 17, 2015, SMC submitted a plan of corrective action and schedule to WVDEP personnel. The plan of corrective action and schedule outlined action items and completion dates for how and when SMC would achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action was approved by WVDEP personnel and has become incorporated into this Order. Failure to adhere to the approved plan and schedule is a violation 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. SMC shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Upon the effective date of this Order, SMC shall be placed on alternate “report only” interim limits for Total Recoverable Zinc at Outlet No. 001, in accordance with the attached Discharge Monitoring Report (DMR). The alternate “report only” interim limits shall expire twenty-four (24) months after the effective date of this Order. After twenty-four (24) months, SMC shall achieve compliance with the Outlet 001 Total Recoverable Zinc limit contained within its WV/NPDES permit.
3. Because of SMC’s permit violations, SMC shall be assessed a civil administrative penalty of twenty-three thousand six hundred ninety-seven dollars (\$23,697) 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. SMC 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, SMC 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, SMC 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 SMC 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, SMC 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 SMC becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and SMC 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 SMC 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 SMC (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 SMC 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 SMC 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 SMC, its successors and assigns.

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


~~Mr. Brent Pyles~~ Mr. Ryan Keaton - COO
SMC Electrical Products Inc.

4-29-2015
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised March 2013

RECEIVED

MAY 05 2015

**ENVIRONMENTAL
ENFORCEMENT**

STATE OF WEST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISCHARGE MONITORING REPORT

FACILITY NAME: (SMC Electrical Products, Inc.) SMC ELECTRICAL PRODUCTS INC CERTIFIED LABORATORY NAME: _____
 LOCATION OF FACILITY: HUNTINGTON; Cabell County CERTIFIED LABORATORY ADDRESS: _____
 PERMIT NO.: WV0115401 OUTLET NO.: 001 _____
 WASTELOAD FOR THE MONTH OF: _____ INDIVIDUAL PERFORMING ANALYSIS: _____

Parameter		Quantity				Other Units					Measurement Frequency	Sample Type	
				Units	N.E.				CEL*	Units			N.E.
50050 (ML-1) RF-A Flow,in Conduit or thru plant Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mgd		2/month	Estimated
00310 (ML-1) RF-B BOD, 5-Day 20 Deg.C Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	Grab
00530 (ML-1) RF-B Total Suspended Solids Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	30 Avg. Monthly	60 Max. Daily	N/A	mg/l		1/quarter	Grab
74055 (ML-1) RF-B Coliform, Fecal Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	200 Mon. Geo. Mean	400 Max. Daily	N/A	Cnts/100m		1/quarter	Grab
00400 (ML-1) RF-B pH Year Round	Reported												
	Permit Limits	N/A	N/A			6 Inst. Min.	N/A	9 Inst. Max.	N/A	S.U.		1/quarter	Grab
00300 (ML-1) RF-B Dissolved Oxygen Year Round	Reported												
	Permit Limits	N/A	N/A			6 Inst. Min.	N/A	N/A	N/A	mg/l		1/quarter	Grab
50060 (ML-1) RF-B Chlorine, Total Residual Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	9 Avg. Monthly	18 Max. Daily	100	ug/l		1/quarter	Grab
01119 (ML-1) RF-B Copper, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	Grab

* CEL = Compliance Evaluation Level

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

STATE OF WEST VIRGINIA
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISCHARGE MONITORING REPORT

FACILITY NAME: (SMC Electrical Products, Inc.) SMC ELECTRICAL PRODUCTS INC CERTIFIED LABORATORY NAME: _____
 LOCATION OF FACILITY: HUNTINGTON; Cabell County CERTIFIED LABORATORY ADDRESS: _____
 PERMIT NO.: WV0115401 OUTLET NO.: 001 _____
 WASTELOAD FOR THE MONTH OF: _____ INDIVIDUAL PERFORMING ANALYSIS: _____

Parameter		Quantity				Other Units					Measurement Frequency	Sample Type	
				Units	N.E.				CEL*	Units			N.E.
01114 (ML-1) RF-B Lead, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	Grab
01094 (ML-1) RF-A Zinc, Total Recoverable Year Round	Reported												
	Order Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		2/month	Grab
01074 (ML-1) RF-B Nickel, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	Grab
01104 (ML-1) RF-B Aluminum, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	Grab
00980 (ML-1) RF-A Iron, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	0.865 Avg. Monthly	2.64 Max. Daily	N/A	mg/l		2/month	Grab
00978 (ML-1) RF-B Arsenic, Total Recoverable Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	Grab
00680 (ML-1) RF-B Total Organic Carbon Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	Grab
81017 (ML-1) RF-B Chem. Oxygen Demand Year Round	Reported												
	Permit Limits	N/A	N/A			N/A	Rpt Only Avg. Monthly	Rpt Only Max. Daily	N/A	mg/l		1/quarter	Grab

* CEL = Compliance Evaluation Level

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

STATE OF WEST VIRGINIA
 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
 DISCHARGE MONITORING REPORT

Final Order Limitations

FACILITY NAME: (SMC Electrical Products, Inc.) SMC ELECTRICAL PRODUCTS INC CERTIFIED LABORATORY NAME: _____
 LOCATION OF FACILITY: HUNTINGTON; Cabell County CERTIFIED LABORATORY ADDRESS: _____
 PERMIT NO.: WV0115401 OUTLET NO.: 001 _____
 WASTELOAD FOR THE MONTH OF: _____ INDIVIDUAL PERFORMING ANALYSIS: _____

Parameter		Quantity				Other Units					Measurement Frequency	Sample Type	
				Units	N.E.				CEL*	Units			N.E.
00552 (ML-1) RF-B	Reported												
Oil and Grease, Hexane EXTR. Year Round	Permit Limits	N/A	N/A			N/A	N/A	15 Max. Daily	N/A	mg/l		1/quarter	Grab
									N/A				
									N/A				
									N/A				
									N/A				
									N/A				
									N/A				
									N/A				
									N/A				

* CEL = Compliance Evaluation Level

Name of Principal Executive Officer <input style="width: 90%; height: 20px;" type="text"/>	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.	Date Completed <input style="width: 90%; height: 20px;" type="text"/>
Title of Officer <input style="width: 90%; height: 20px;" type="text"/>		Signature of Principal Executive Officer or Authorized Agent <input style="width: 90%; height: 40px;" type="text"/>

Table One: SMC DMR Exceedance Summary - Outlet 001

Outlet 001 DMR Exceedances - AVG. MONTHLY - September 2012 through January 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
						-	X	-
12/2012	Total Residual Chlorin	ug/l	28	70	150%	-	X	-
9/2012	Zinc	mg/l	0.06	0.189	215%	-	X	-
3/2013	Zinc	mg/l	0.06	0.11	83%	-	X	-
6/2013	Zinc	mg/l	0.06	0.34	467%	-	-	X
9/2013	Zinc	mg/l	0.06	0.1	67%	-	X	-
12/2013	Zinc	mg/l	0.06	0.1	67%	-	X	-
3/2014	Zinc	mg/l	0.06	0.6	900%	-	-	X
6/2014	Zinc	mg/l	0.06	0.3	400%	-	-	X
3/2014	Iron	mg/l	0.89	3.1	248%	-	X	-
6/2014	Iron	mg/l	0.89	4.17	369%	-	-	X
9/2012	TSS	mg/l	30	64	113%	-	X	-
6/2014	TSS	mg/l	30	190	533%	-	-	X
9/2014	Zinc	mg/l	0.06	0.13	117%	-	X	-
10/2014	Zinc	mg/l	0.06	0.124	107%	-	X	-
12/2014	Total Residual Chlorin	ug/l	9	1270	14011%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - September 2012 through January 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
						-	X	-
6/2013	Zinc	mg/l	0.117	0.34	191%	-	X	-
3/2014	Zinc	mg/l	0.117	1.5	1182%	-	-	X
6/2014	Zinc	mg/l	0.117	0.65	456%	-	X	-
3/2014	Iron	mg/l	2.68	6.9	157%	-	X	-
6/2014	Iron	mg/l	2.68	13	385%	-	X	-
6/2014	TSS	mg/l	60	190	217%	-	X	-
9/2014	Zinc	mg/l	0.117	0.37	216%	-	X	-
10/2014	Zinc	mg/l	0.117	0.17	45%	X	-	-
12/2014	Total Residual Chlorin	ug/l	18	1270	6956%	-	-	X

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	1	15	8

Table Two: SMC DMR Exceedance Summary - Outlet 101

Outlet 101 DMR Exceedances - AVG. MONTHLY - September 2012 through January 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
3/2013	BOD	mg/l	5	15	200%	-	X	-
6/2013	BOD	mg/l	5	6	20%	X	-	-
6/2013	Nitrogen, Total Ammon	mg/l	3	3.6	20%	X	-	-
9/2013	BOD	mg/l	5	11	120%	-	X	-
12/2013	BOD	mg/l	5	7.2	44%	-	X	-
3/2014	BOD	mg/l	5	9.2	84%	-	X	-
1/2015	BOD	mg/l	5	14	180%	-	X	-

Outlet 101 DMR Exceedances - MAX. DAILY - September 2012 through January 2015						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
3/2013	BOD	mg/l	10	15	50%	X	-	-
9/2013	BOD	mg/l	10	11	10%	X	-	-
1/2015	BOD	mg/l	10	14	40%	X	-	-

Outlet 101 Totals		Degree of non-compliance		
		Min	Mod	Maj
		5	5	0

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)	\$547		\$547
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)		40	(\$23,120)
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	(\$5,780)
6.2.b.3 - Cooperation with the Secretary		10	(\$5,780)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$34,103)
Penalty =			\$23,697

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$547
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	\$547
Comments: Avoided cost of Iron and Zinc analysis.	