



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
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**

TO: Smith Fastener Company
Mr. James Smith
PO Box 8555
South Charleston, WV 25303

DATE: April 17, 2015

ORDER NO.: 8249

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 Smith Fastener Company (hereinafter "Smith Fastener").

FINDINGS OF FACT

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

1. Smith Fastener operates a sewage treatment plant located near Charleston, Kanawha County, West Virginia. Smith Fastener was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550476 on February 3, 2011.
2. On August 8, 2013, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, exceedances of Smith Fastener's WV/NPDES Permit parameters (Section A) were observed and documented.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W13-20-327-KWS was issued to Smith Fastener.

3. On December 16, 2013, WVDEP issued Order No. 8003 to Smith Fastener for submitting Discharge Monitoring Reports with inaccurate laboratory results.

4. On December 19, 2013, in response to Order No. 8003, Smith Fastener re-submitted the corrected electronic Discharge Monitoring Reports. The re-submitted reports included violations during the Fourth Quarter of 2012 that were not reported on the initial submission.
5. On February 3, 2015, WVDEP personnel visited the facility. During the visit, WVDEP personnel observed that the plant was discharging, but were unable to gain access to the facility.
6. On February 13, 2015, WVDEP personnel conducted a review of facility records from the time period of First Quarter 2012 through Fourth Quarter 2014. During this review, the following violations of the terms and conditions of Smith Fastener's WV/NPDES permit were observed:
 - a. Section A - Nineteen (19) exceedances of Smith Fastener's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations-eleven (11)
 - ii. Moderate violations-six (6)
 - iii. Major violations-two (2)

As a result of the aforementioned violations, NOV Nos. W13-20-327-KWS, W14-20-198-BMW, W14-20-236-BMW, and W14-20-284-BMW were issued to Smith Fastener.

7. On April 15, 2015, WVDEP personnel and representatives of Smith Fastener 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. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Smith Fastener shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Within thirty (30) days of the effective date of this Order, Smith Fastener shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Smith Fastener will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0103110, Registration No. WVG550476, and Order No. 8249. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

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 Smith Fastener's permit violations, Smith Fastener shall be assessed a civil administrative penalty of seven thousand four hundred thirty dollars (\$7,430) 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. Smith Fastener 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, Smith Fastener 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, Smith Fastener 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 Smith Fastener 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, Smith Fastener 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 Smith Fastener becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Smith Fastener 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 Smith Fastener 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 Smith Fastener (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 Smith Fastener 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 Smith Fastener 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 Smith Fastener, its successors and assigns.
- 7. This Order shall terminate upon Smith Fastener's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

RECEIVED

APR 27 2015

ENVIRONMENTAL ENFORCEMENT

James F. Smith
Mr. James Smith
Smith Fastener Company

4-22-15
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

Table One: Smith Fastener Company DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - First Quarter 2012 through Fourth Quarter 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
1Q12	BOD	mg/L	30	33.3	11%	X	-	-
1Q12	TSS	mg/L	30	35	17%	X	-	-
4Q12	BOD	mg/L	30	39.5	32%	X	-	-
4Q12	TSS	mg/L	30	106	253%	-	X	-
1Q13	BOD	mg/L	30	84	180%	-	X	-
1Q13	TSS	mg/L	30	90	200%	-	X	-
1Q13	Fecal Coliform Bacteri	col/100ml	200	4700	2250%	-	-	X
2Q13	BOD	mg/L	30	56	87%	-	X	-
2Q13	TSS	mg/L	30	38	27%	X	-	-
3Q13	Fecal Coliform Bacteri	col/100ml	200	700	250%	-	X	-
1Q14	TSS	mg/L	30	37	23%	X	-	-
2Q14	TSS	mg/L	30	70	133%	-	X	-
3Q14	TSS	mg/L	30	32.5	8%	X	-	-

Outlet 001 DMR Exceedances - MAX. DAILY - First Quarter 2012 through Fourth Quarter 2014						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
4Q12	TSS	mg/L	60	106	77%	X	-	-
1Q13	BOD	mg/L	60	84	40%	X	-	-
1Q13	TSS	mg/L	60	90	50%	X	-	-
1Q13	Fecal Coliform Bacteri	col/100ml	400	4700	1075%	-	-	X
3Q13	Fecal Coliform Bacteri	col/100ml	400	700	75%	X	-	-
2Q14	TSS	mg/L	60	96	60%	X	-	-

Outlet 001 Totals	Degree of non-compliance		
	Min	Mod	Maj
	11	6	2

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Smith Fastener Company Receiving Stream: _____

Treatment System Design Maximum Flow: 0.0015 MGD

Treatment System Actual Average Flow: 0.0015 MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

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

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)			\$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)		50	(\$9,250)
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		10	(\$1,850)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$11,070)
Penalty =			\$7,430

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: No economic benefit warranted.	