



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
HAZARDOUS WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: Steel of West Virginia, Inc.
Chris Artrip, EHS Manager
P.O. Box 2547
Huntington, WV 25726

DATE: April 30, 2015

ORDER NO.: MM-14-020

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 18, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. to Steel of West Virginia, Inc. (hereinafter "SWVA").

FINDINGS OF FACT

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

1. SWVA operates a steel mill located in Huntington, Cabell County, West Virginia and has been assigned EPA ID No. WVD072667801.
2. On April 17, 2013, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the Code of Federal Regulations and WV Legislative Rules were observed and documented:
 - a. 40CFR279.22(d)(3) – The facility failed to properly manage the release of used oil.

- b. 40CFR265.171 – The facility failed to replace a hazardous waste container in poor condition.

As a result of the aforementioned violations, a Notice of Violation (NOV) was issued to SWVA.

3. On June 5, 2013, SWVA submitted a written response to the above mentioned NOV. This submittal included the following claims/information:
 - a. The “mill ponds” are used for wastewater treatment as opposed to used oil management.
 - b. The “mill ponds” are not surface impoundments but are in fact “tanks.”
 - c. The hazardous waste storage containers that were in poor condition were replaced.
4. On July 10, 2013, WVDEP personnel conducted a follow-up inspection at SWVA. This inspection focused on the rolling mill ponds and the used oil removed from them. During the inspection, it was observed and documented that spilled used oil, saw dust, and metal scale were removed from the area surrounding mill pond No. 1. Twenty seven (27) fifty-five (55) gallon drums of petroleum contaminated material were generated during this remedial action. Used oil spillage was observed around mill pond No. 1.
5. On August 1, 2013 WVDEP issued an information request regarding the construction, operation, and maintenance of mill ponds to SWVA. SWVA was originally given twenty (20) days to respond to the request. The deadline was later extended to September 30, 2013.
6. On October 1, 2013, WVDEP received SWVA’s response to the above-mentioned information request. The information submitted included specific details about the facility’s used oil management, waste water treatment, and construction of the mill ponds. Through the review of available information and observation of visible conditions at its facility, WVDEP personnel determined that SWVA allowed oily waste material which may have impacted groundwater quality to escape from the mill ponds and flow onto the land surface in violation of WV Legislative Rule 47CSR58 Section 7.1.
7. On October 18, 2013, WVDEP personnel conducted an inspection at SWVA and observed and documented violations of the following section of WV Legislative Rule:
 - a. 47CSR58 Section 4.11 – The facility’s Groundwater Protection Plan (GPP) was inadequate and needed to be updated. Specifically, the GPP did not contain an adequate inventory of all operations which may reasonably have been expected to contaminate the groundwater resources, and there was no indication of the potential for soil and groundwater contamination from those operations. The following potential sources should have been considered: outside materials storage areas; disposal areas; loading/unloading areas; bulk storage/distribution areas; drums; sumps; pumps; tanks; impoundments; ditches; and underground pipelines. In addition, the GPP failed to provide a thorough and detailed description of procedures designed to protect groundwater from identified

potential contamination sources. Specific attention should have been given to manufacturing facilities; materials handling; equipment cleaning; constructive activities; maintenance activities; pipelines; sumps; and tanks with containments.

As a result of the aforementioned violation, NOV No. W14-06-018-RTH was issued to SWVA on March 14, 2014.

8. On August 14, 2014, WVDEP personnel and representatives of SWVA met to discuss the terms and conditions of this Order.
9. On April 28, 2015, WVDEP personnel received a plan of corrective action and schedule from SWVA. The plan of corrective action and schedule outlined action items and completion dates for how and when SWVA will achieve compliance with all pertinent laws and rules. WVDEP personnel subsequently approved the plan of corrective action and schedule, and it has become part of this Order. Failure to adhere to the approved plan of corrective action and schedule is a violation of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 18, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

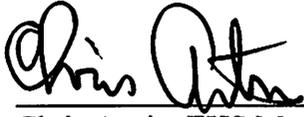
1. SWVA shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of SWVA's Code of Federal Regulations violation, SWVA shall be assessed a civil administrative penalty eight thousand twenty-two dollars (\$8,022) which shall be paid to the West Virginia Department of Environmental Protection for deposit in the Hazardous Waste 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. SWVA hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 18, Section 20 and Chapter 22, Article 12, Section 11 of the Code of West Virginia. Under this Order, SWVA 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, SWVA 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 SWVA 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, SWVA 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 SWVA becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and SWVA 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 SWVA 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 SWVA (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 SWVA 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 SWVA 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 SWVA, its successors and assigns.

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



Chris Artrip, EHS Manager
Steel of West Virginia, Inc.

5-5-15

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

RECEIVED

MAY 07 2015

**ENVIRONMENTAL
ENFORCEMENT**

Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party: Steel of West Virginia, Inc. **EPA ID Number:** WVD072267801

Generator Classification: LQG

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			2a.												
a)	Harm to RCRA Program	1 to 3	2												
b)	Probability of Exposure	0 to 3	3												
c)	Potential Seriousness of Contamination	1 to 3	2												
Average Potential for Harm Factor			2.3	No											
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	2												

Potential for Harm Factors

1a. - Harm to the RCRA Program

- All regulatory requirements are fundamental to the continued integrity of the RCRA Program
- Violations that undermine the statutory or regulatory purposes or procedures for implementing the RCRA program may have serious implications and merit substantial penalties. Examples include but are not limited to: failure to notify as a generator, failure to respond to an info request, failure to prepare or maintain a manifest, and operating / disposal without a permit

1b. - Probability of Exposure - factors to be considered include but are not limited to: evidence of a release, evidence of waste mismanagement, and adequacy of provisions for detecting and preventing a release

1c. - Potential Seriousness of Contamination - factors to consider include but are not limited to quantity and toxicity of wastes (potentially) released, likelihood or fact of transport by way of environmental media (e.g. air and groundwater), and existence, size and proximity of receptor populations (e.g. local residents, fish, wildlife) and sensitive environmental media (e.g. surface waters and aquifers.)

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

		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
2a.	Major	Moderate	\$6,660	1	\$6,660
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
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
Total Base Penalty					\$6,660

Penalty Adjustment Factors

(pursuant to 33CSR27-6.2)

Penalty Adjustment Factors

6.2.b.1 - Good faith efforts to comply or lack of good faith - 10% decrease to 10% increase

6.2.b.2 - Degree of Willfulness and / or Negligence - 0% to 30% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.4 - History of Non-Compliance - 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

6.2.b.5 - Ability to pay a civil administrative penalty - 0% to 100% decrease

6.2.b.6 - Economic Benefit of non-compliance

6.2.b.7 - Staff Investigative Costs

6.2.b.8 - Other relevant factors determined on a case-by-case basis

Base Penalty Adjustments

(pursuant to 33CSR27-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Good Faith - Increase			\$0
6.2.b.1 - Good Faith - Decrease			\$0
6.2.b.2 - Willfulness and/or negligence	30		\$1,998
6.2.b.3 - Cooperation with the Secretary		10	(\$666)
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.5 - Ability to Pay an Administrative Penalty			\$0
6.2.b.6 - Economic Benefit (flat monetary increase)	\$0		\$0
6.2.b.7 - Staff Investigative Costs (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Cost (flat monetary increase)	\$30		\$30
Penalty Adjustments			\$1,362
Penalty =			\$8,022

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:	