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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

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

**CONSENT ORDER  
ISSUED UNDER THE  
HAZARDOUS WASTE MANAGEMENT ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18**

TO: Allegheny Restoration & Builders, Inc.  
Attn: Thomas Anderson, Vice President  
1000 Coombs Farm Drive, Suite 202  
Morgantown, WV 26508

DATE: June 6, 2016

ORDER NO.: HW-16-005

**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. to Allegheny Restoration & Builders, Inc. (hereinafter "Allegheny Restoration").

**FINDINGS OF FACT**

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

1. Allegheny Restoration operates a historic building restoration business located in Beckley, Raleigh County, West Virginia and has been assigned EPA ID No. WVR000523753.
2. On August 25, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the Code of Federal Regulations and WV Legislative Rules was observed and documented:
  - a. 40CFR262.11 as referenced by 33CSR20 Section 5.1 –Allegheny Restoration failed to complete a hazardous waste determination for the wastewater from the pressure washing process.

As a result of the aforementioned violation, Notice of Violation (NOV) No. 1509-168 was issued to Allegheny Restoration.

3. On November 12, 2015, 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. 40CFR262.11 as referenced by 33CSR20 Section 5.1 –Allegheny Restoration failed to complete a hazardous waste determination for the wastewater sludge from the settling tank, the stripper tank solids, PPE used during stripping, removed glazing compound, and waste removed from the glass cleaning vat.
  - b. 40CFR265.173(a) as referenced by 262.34(d)(2) - Allegheny Restoration failed to keep containers of hazardous waste closed when waste was not being added or removed. Specifically, the drum of accumulated wastewater sludge and the thinner can were open.
  - c. 40CFR262.34(a)(3) as referenced by 262.34(d)(4) - Allegheny Restoration failed to mark or label containers of hazardous waste with the words “Hazardous Waste.” Specifically, the drum of accumulated wastewater sludge, the drum of stripper tank solids, and the thinner can were not labeled.
  - d. 40CFR262.34(a)(2) as referenced by 262.34(d)(4) - Allegheny Restoration failed to mark containers of hazardous waste with the accumulation start date. Specifically, the drum of accumulated wastewater sludge, the drum of stripper tank solids, and the thinner can were not dated.
  - e. 40CFR262.12(c) as referenced by 33CSR20 Section 5.1 - Allegheny Restoration offered hazardous waste to a transporter and a disposal facility that did not have EPA ID Numbers and were not permitted to accept hazardous waste for transport or disposal. Specifically, hazardous waste was placed in a municipal trash dumpster.
  - f. 40CFR262.20(a)(1) as referenced by 33CSR20 Section 5.1 - Allegheny Restoration failed to prepare a hazardous waste manifest for the shipment of waste in the dumpster to the disposal facility.
  - g. 40CFR268.7(a)(2) as referenced by 262.34(d)(4) - Allegheny Restoration failed to provide a one-time initial notification regarding Land Disposal Restriction treatment standards to the receiving facility.
  - h. 40CFR262.34(d)(5)(iii) as referenced by 33CSR20 Section 5.1 - Allegheny Restoration failed to ensure that all employees were thoroughly familiar with proper waste handling procedures, relevant to their responsibilities during normal facility operations.

As a result of the aforementioned violations, NOV No. 1509-172 was issued to Allegheny Restoration.

4. On March 31, 2016, WVDEP personnel received documentation confirming that Allegheny Restoration had achieved compliance with the aforementioned laws and rules.
5. On May 4, 2016, WVDEP personnel met with representatives of Allegheny Restoration to discuss the terms and conditions of the Order.

**ORDER FOR COMPLIANCE**

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

1. Allegheny Restoration shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of Allegheny Restoration's Code of Federal Regulations and WV Legislative Rule violations, Allegheny Restoration shall be assessed a civil administrative penalty of twelve thousand four hundred thirty eight dollars (\$12,438) to be paid to the West Virginia Department of Environmental Protection for deposit in the Hazardous Waste Management Fund in accordance with the following schedule:

Payment 1 in the amount of \$1,036.50 due on or before July 1, 2016.  
Payment 2 in the amount of \$1,036.50 due on or before August 1, 2016.  
Payment 3 in the amount of \$1,036.50 due on or before September 1, 2016.  
Payment 4 in the amount of \$1,036.50 due on or before October 1, 2016.  
Payment 5 in the amount of \$1,036.50 due on or before November 1, 2016.  
Payment 6 in the amount of \$1,036.50 due on or before December 1, 2016.  
Payment 7 in the amount of \$1,036.50 due on or before January 1, 2017.  
Payment 8 in the amount of \$1,036.50 due on or before February 1, 2017.  
Payment 9 in the amount of \$1,036.50 due on or before March 1, 2017.  
Payment 10 in the amount of \$1,036.50 due on or before April 1, 2017.  
Payment 11 in the amount of \$1,036.50 due on or before May 1, 2017.  
Payment 12 in the amount of \$1,036.50 due on or before June 1, 2017.

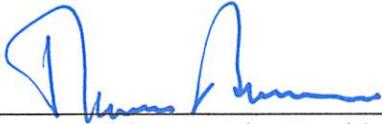
Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

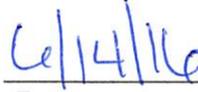
### **OTHER PROVISIONS**

1. Allegheny Restoration hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 18, Section 20 of the Code of West Virginia. Under this Order, Allegheny Restoration 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, Allegheny Restoration 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 Allegheny Restoration 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, Allegheny Restoration 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 Allegheny Restoration becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Allegheny Restoration 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 Allegheny Restoration 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 Allegheny Restoration (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 Allegheny Restoration 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 Allegheny Restoration 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 Allegheny Restoration, its successors and assigns.

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



\_\_\_\_\_  
Thomas Anderson, Vice President  
Allegheny Restoration & Builders, Inc.



\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

*revised June 2015*

**RECEIVED**

JUN 15 2016

ENVIRONMENTAL  
ENFORCEMENT



November 12, 2015 – Photo 1: White paint chips on lip of trash dumpster and on asphalt pavement below.



November 12, 2015 – Photo 9: Sawdust, broken glass, paint chips, glazing, etc in open trash can by wastewater settling tank.



November 12, 2015 – Photo 11: White paint chips and trash in 5-gallon pail immediately outside of paint stripping room.



November 12, 2015 – Photo 12: Wastewater sludge collected in the past month in open container, with no date or label.



November 12, 2015 – Photo 13: Unlabeled, undated container of stripper tank solids.



November 12, 2015 – Photo 16: Open, unlabeled, undated 5-gallon waste paint thinner can with plastic bottle funnel in it in paint room.

## Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

**Responsible Party:** Allegheny Restoration & Builders, Inc. **EPA ID Number:** WVR000523753

**Generator Classification:** SQG

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			3a	3b	3e	3f								
a)	Harm to RCRA Program	1 to 3	3	1	2	2								
b)	Probability of Exposure	0 to 3	1	1	2	2								
c)	Potential Seriousness of Contamination	1 to 3	1	1	1	1								
<b>Average Potential for Harm Factor</b>			1.7	1	1.7	1.7	No							
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	2	1	2	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.





## **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		10	(\$1,201)
6.2.b.2 - Willfulness and/or negligence	20		\$2,402
6.2.b.3 - Cooperation with the Secretary		10	(\$1,201)
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)	\$398		\$398
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
<b>Penalty Adjustments</b>			<b>\$428</b>
<b>Penalty =</b>			<b>\$12,438</b>

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	\$80
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	\$318
Permit Application or Modification	
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$398</b>
<b>Comments:</b>	Avoided costs of sampling for TCLP lead and disposal of one drum of D008 (lead) hazardous waste.