



west virginia department of environmental protection

Division of Water and Waste Management
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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
HAZARDOUS WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18**

TO: American National Rubber
Kevin Holderby
P.O. Box 877
Ceredo, WV 25507

DATE: February 6, 2014

ORDER NO.: MM-14-07

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 18, Section 1 et seq. to American National Rubber.

FINDINGS OF FACT

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

1. American National Rubber operates a rubber manufacturing and processing facility located in Ceredo, Wayne County, West Virginia. American National Rubber has been assigned EPA ID No. WVD005008552. WV/NPDES Water Pollution Control Permit No. WV011457, Registration No. WVG610024, was inactivated on April 4, 1997 and has not been renewed.
2. On August 14, 2013, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, the Huntington

Promoting a healthy environment.

Sanitary Board was contacted to determine whether American National Rubber was permitted and had permission to discharge industrial waste into the sanitary sewer to be treated at the City of Huntington's wastewater treatment facility. WVDEP personnel determined that American National Rubber was in violation of the City of Huntington's pretreatment ordinance. During the inspection, violations of the following sections of WV State Code and WV Legislative Rules were observed and documented:

- a. 22-11-8 and 47CSR10 Section 3.1 - American National Rubber failed to obtain a WV/NPDES Permit for Storm Water Associated with Industrial Activity.
- b. 47CSR58
 - i. Section 4.4.a – American National Rubber did not have adequate spill prevention and control facilities and procedures as well as secondary containment for its bulk storage facilities.
 - ii. Section 4.4.b – American National Rubber's distribution facilities and bulk containers were not designed/installed in such a manner so as to prevent spills and leaks from contaminating groundwater.
 - iii. Section 4.5.a – American National Rubber had not properly evaluated its existing impoundments to determine the potential for groundwater contamination and taken actions to eliminate groundwater contamination.
 - iv. Section 4.11 – American National Rubber did not have a comprehensive Groundwater Protection Plan.
 - v. Section 7.1 – American National Rubber allowed oil to escape the facility's designated containment area.
- c. 47CSR11
 - i. Section 2.2.a – American National Rubber failed to immediately report and notify the Office of Water Resources' Emergency Spill Number of any spill or accidental discharge of pollutants.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. W13-50-008-RTH, W13-50-009-RTH, and W13-50-018-RTH were issued to American National Rubber.

3. On August 16, 2013, WVDEP personnel conducted an inspection of the facility in response to a complaint received through an NRC spill report on August 13, 2013. During the inspection, violations of the following sections of The Code of Federal Regulations were observed and documented:
 - a. 40CFR279.22(b) – The facility failed to store used oil in containers that were in good condition and not leaking.
 - b. 40CFR279.22(c)(1) – The facility failed to properly label containers of used oil with the words "Used Oil."
 - c. 40CFR279.22(d)(3) – The facility failed to properly manage the release of used oil.

As a result of the aforementioned violations, an NOV was issued to American National Rubber.

4. On August 20, 2013, WVDEP personnel conducted a follow-up inspection of the facility. During the inspection, the following observations were documented:
 - a. Multiple storage areas of the Closed Cell Sponge Mats were stored outside unprotected.
 - b. Runoff from the outside finished product storage area was discharging into a nearby storm drain.
 - c. Multiple unmarked chemical totes were in the outside finished product storage.
5. On November 26, 2013, American National Rubber was issued WV/NPDES Water Pollution Control Permit No. WV011457, Registration No. WVG611663 for regulated activities at the aforementioned facility.
6. On January 16, 2014, WVDEP personnel and representatives of American National Rubber 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 18, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. American National Rubber shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Upon the effective date of this Order, American National Rubber shall immediately take all measures to properly manage the release of used oil.
3. Upon the effective date of this Order, American National Rubber shall immediately begin storing used oil only in containers that are in good condition and not leaking as described in Code of Federal Regulations 40CFR279.22(b), which includes no severe rusting, no apparent structural defects or deterioration, and no visible leaks.
4. Within thirty (30) days of the effective date of this Order, American National Rubber shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when American National Rubber will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to EPA ID No. WVD005008552 and Order No. MM-14-07. 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:

**WVDEP Environmental Inspector Supervisor
Christopher M. Gatens
WVDEP/DWWM/EE/HW
601 57th Street SE
Charleston, WV 25304**

A copy of this plan shall also 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.

5. Because of American National Rubber's WV State Code, WV Legislative Rule, and Code of Federal Regulations violations, American National Rubber shall be assessed a civil administrative penalty of twelve thousand two hundred ninety-one dollars (\$12,291), to be paid as follows:

A payment of four thousand seven hundred ninety dollars (\$4,790) shall be made 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.

A payment of seven thousand five hundred one dollars (\$7,501) shall be made 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.

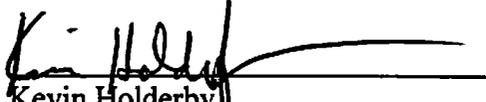
Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

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

OTHER PROVISIONS

1. American National Rubber 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 18, Section 20 of the Code of West Virginia. Under this Order, American National Rubber 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, American National Rubber 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 American National Rubber 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, American National Rubber 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 American National Rubber becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and American National Rubber 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 American National Rubber American National Rubber 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 American National Rubber (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 American National Rubber 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 American National Rubber 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 American National Rubber, its successors and assigns.

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


Kevin Holderby
American National Rubber

Feb-14, 2014
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date



8/16/2013 – Used oil spillage in “SPCC” area.



8/16/2013 – Drums of unlabeled used oil on the left and unlabeled totes of used oil in center and on the right.



8/16/2013 – Unlabeled totes of used oil with some leaking and notable spillage around them.



8/22/2013 – Oily water leaving concrete pad and entering the ground on south eastern end of the facility.

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 -	20		\$720
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	(\$360)
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$1,190
Penalty =			\$4,790

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: \$800 = avoided costs of DMR sampling/reporting	

Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party: American National Rubber **EPA ID Number:** WVD005008552

Generator Classification: Non-Handler

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			3a.	3b.	3c.										
a)	Harm to RCRA Program	1 to 3	2	1	2										
b)	Probability of Exposure	0 to 3	3	0	3										
c)	Potential Seriousness of Contamination	1 to 3	1	1	1										
Average Potential for Harm Factor			2	0.7	2	No									
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	2	2	1										

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	(\$834)
6.2.b.2 - Willfulness and/or negligence			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
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)			\$0
Penalty Adjustments			(\$834)
Penalty =			\$7,501

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:	