



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
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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**

TO: Abbott's Garage & Wrecker Service LLC
Eugene Mallory, Owner
506 1st Avenue South
Nitro, WV 25143

DATE: August 18, 2015

ORDER NO.: HW-15-011

AND

Portsmouth Car Crushers
Duane Pick, Owner
1309 Galena Pike
West Portsmouth, OH 45663

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 Abbott's Garage & Wrecker Service LLC (hereinafter "Abbott's") and Portsmouth Car Crushers (hereinafter "Portsmouth").

FINDINGS OF FACT

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

1. Abbott's operates a car crushing operation and storage lot for automobiles located in South Charleston, Kanawha County, West Virginia and was assigned EPA ID No. WVR000532622 on January 20, 2015. Portsmouth is a contractor employed by Abbott's. Abbott's and Portsmouth are co-generators of hazardous waste at the facility.

2. On January 13, 2015, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, two (2) pools of spillage were sampled, and the results for both samples reflected elevated levels of benzene. Violations of the following sections of the Code of Federal Regulations were observed and documented:
 - a. 40CFR262.12(a) – Abbott's treated, stored, disposed, transported or offered for transport hazardous waste without receiving an EPA ID Number.
 - b. 40CFR262.11 – Abbott's and Portsmouth failed to perform a hazardous waste determination.
 - c. 40CFR265.173(a) – Abbott's and Portsmouth failed to keep hazardous waste containers closed except when adding or removing waste.
 - d. 40CFR265.173(b) – Abbott's and Portsmouth failed to properly handle containers of hazardous waste to ensure they would not rupture or leak.
 - e. 40CFR262.34(a)(3) – Abbott's and Portsmouth failed to label containers clearly with the words "Hazardous Waste."
 - f. 40CFR262.34(a)(2) – Abbott's and Portsmouth failed to label containers clearly with accumulation start dates.
 - g. 40CFR265.174 – Abbott's and Portsmouth failed to complete weekly inspections of hazardous waste storage areas.
 - h. 40CFR265.32(c) – Abbott's and Portsmouth failed to provide adequate fire and spill control equipment.
 - i. 40CFR270.1(c) – Abbott's and Portsmouth failed to obtain a permit for the treatment, storage, or disposal of a hazardous waste.
 - j. 40CFR265.31 – Abbott's and Portsmouth failed to maintain and operate a facility to minimize the possibility of a fire, explosion, or any unplanned release of hazardous waste.
 - k. 40CFR262.34(d)(5)(iii) – Abbott's and Portsmouth failed to ensure all employees were thoroughly familiar with proper waste handling and emergency procedures.
 - l. 40CFR279.22 – Abbott's and Portsmouth failed to properly manage used oil, including failure to properly label the used oil and adequately respond to releases.

As a result of the aforementioned violations, a Notice of Violation (NOV) was issued to Abbott's and Portsmouth.

3. On August 5, 2015, WVDEP personnel and representatives of Abbott's and Portsmouth met to discuss the terms and conditions of this 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. Abbott's and Portsmouth shall immediately take all measures to initiate compliance with all pertinent laws and rules.

2. Within fifteen (15) days of the effective date of this Order, Abbott's and Portsmouth shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Abbott's and Portsmouth will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to EPA ID No. WVR000532622 and Order No. HW-15-011. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
Hazardous Waste
131 A Peninsula St.
Wheeling, WV 26003**

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.

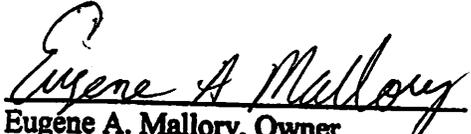
3. Because of Abbott's and Portsmouth's Code of Federal Regulations violations, Abbott's and Portsmouth shall be assessed a civil administrative penalty of twenty-three thousand three hundred thirty dollars (\$23,330) to be paid to the West Virginia Department of Environmental Protection for deposit 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**

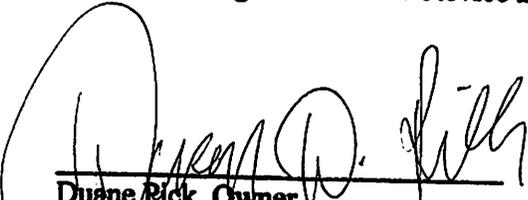
OTHER PROVISIONS

1. Abbott's and Portsmouth hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 18, Section 20 and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia. Under this Order, Abbott's and Portsmouth 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, Abbott's and Portsmouth 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 Abbott's and Portsmouth 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, Abbott's and Portsmouth 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 Abbott's and Portsmouth becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Abbott's and Portsmouth 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 Abbott's and Portsmouth 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 Abbott's and Portsmouth (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 Abbott's and Portsmouth 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 Abbott's and Portsmouth 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 Abbott's and Portsmouth, their successors and assigns.
7. This Order shall terminate upon Abbott's and Portsmouth's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


Eugene A. Mallory, Owner
Abbott's Garage & Wrecker Service LLC

8-31-15
Date


Duane Pick, Owner
Portsmouth Car Crushers

Aug 8 2015
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised June 2013

RECEIVED

SEP 04 2015

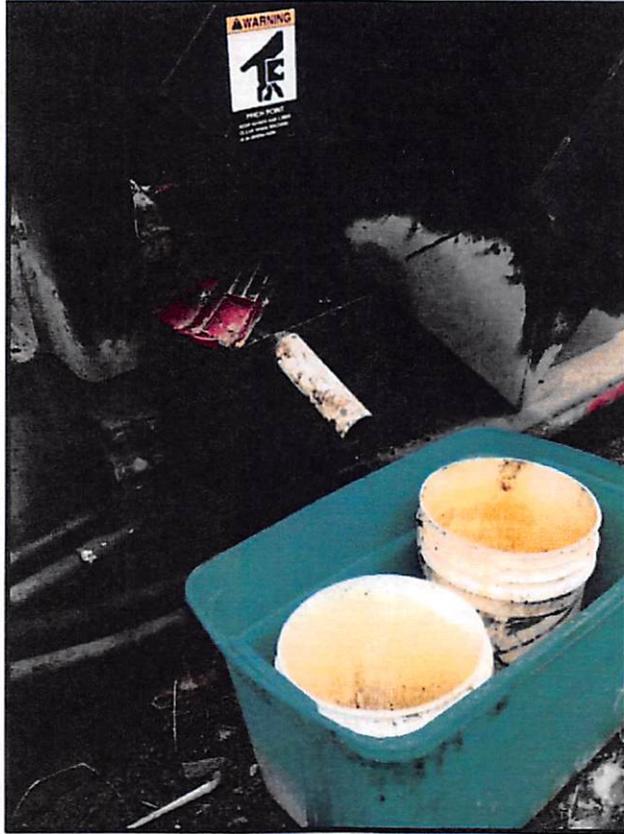
ENVIRONMENTAL
ENFORCEMENT



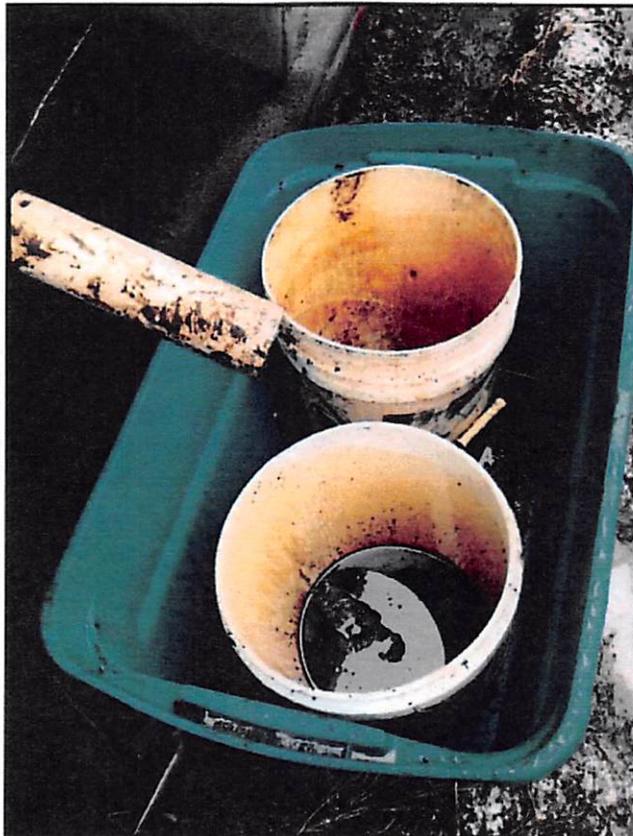
1/13/2015 – Abbott's crushing operations



1/13/2015 – Crusher On-site



1/13/2015 – Fluids collection on crusher



1/13/2015 – Fluids collection on crusher



1/13/2015 – Used Oil tote



1/13/2015 – Fuel and Used Oil totes



1/13/2015 – Mattock for fuel tank puncturing



1/13/2015 – Hose for draining fuel

Photo Attachment



1/13/2015 – Large spillage (Sampled)



1/13/2015 – Spots of spillage (Sampled)



1/13/2015 – Sheen on pooling water



1/13/2015 – Fuel tanks to be crushed

Photo Attachment



1/13/2015 – Waste batteries in truck bed

Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party: Abbott's Garage & Wrecker Service LLC
and Portsmouth Car Crushers. **EPA ID Number:** WVR000532622

Generator Classification: **SQG**

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			2a	2b	2c	2i	2j	2l							
a)	Harm to RCRA Program	1 to 3	3	3	1	3	2	1							
b)	Probability of Exposure	0 to 3	0	0	2	3	1	2							
c)	Potential Seriousness of Contamination	1 to 3	1	1	1	2	2	1							
Average Potential for Harm Factor			1.3	1.3	1.3	2.7	1.7	1.3	No						
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	2	2	1	2	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	(\$2,333)
6.2.b.2 - Willfulness and/or negligence	10		\$2,333
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		\$0
Penalty Adjustments			\$0
Penalty =			\$23,330

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.	