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

TO: B and B Transit Inc.  
Attn: James Buckland, President  
PO Box 1682  
Beaver, WV 25813

DATE: April 1, 2013

ORDER NO.: 7781

**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., and Chapter 22, Article 12, Section 1 et seq. to B and B Transit Inc. (hereinafter "B and B Transit").

**FINDINGS OF FACT**

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

1. B and B Transit operates a salvage yard located in Beaver, Raleigh County, West Virginia. B and B Transit was issued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG610474, on February 10, 1995. The Permit was reissued on June 4, 1999, January 12, 2007, and February 25, 2011.
2. On March 23, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and B and B Transit's WV/NPDES permit were observed and documented:

- a. Appendix A.III - The permittee failed to submit 2010 Discharge Monitoring Reports (DMRs).
- b. 47CSR58 Section 4.7.d - B and B Transit failed to store drums containing materials that have the potential to contaminate groundwater so that spills and leaks were contained.
- c. 47CSR58 Section 7.1 - B and B Transit allowed petroleum products and/or chemical mixtures to flow onto and under the land surface in such a manner that could impact groundwater quality.

As a result of the aforementioned violations, Notices of Violation (NOV) Nos. I11-41-018-JHH and I11-41-019-JHH were issued to B and B Transit.

3. On November 26, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rules and B and B Transit's WV/NPDES permit were observed and documented:
  - a. Appendix A.III - The permittee failed to submit DMRs for 2010 and the second half of 2011.
  - b. 47CSR58 Section 4.7.d - B and B Transit failed to store drums containing materials that have the potential to contaminate groundwater so that spills and leaks were contained.
  - c. 47CSR58 Section 7.1 - B and B Transit allowed petroleum products and/or chemical mixtures to flow onto and under the land surface in such a manner that could impact groundwater quality.

As a result of the aforementioned violations, NOV Nos. I12-41-063-JHH and I12-41-064-JHH were issued to B and B Transit.

4. On March 19, 2013, WVDEP personnel and a representative of B and B Transit met to discuss the terms and conditions of this Order.
5. On March 28, 2013, WVDEP personnel received financial documents from B and B Transit. The provided information was used to perform an economic analysis which evaluated B and B Transit's ability to pay a civil administrative penalty.

### **ORDER FOR COMPLIANCE**

Now, therefore, in accordance with Chapter 22, Article 11, 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. B and B Transit shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, B and B Transit shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when B and B Transit will achieve compliance with all

terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0111457, Registration No. WVG610474, and Order No. 7781. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
SE Regional Environmental Enforcement Office  
254 Industrial Drive  
Oak Hill, WV 25901**

A copy of this plan shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> 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.

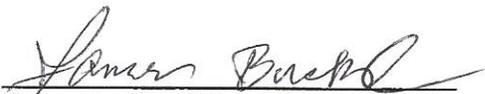
3. Because of B and B Transit's permit violations, B and B Transit shall be assessed a civil administrative penalty of two thousand four hundred eighty dollars (\$2,480) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### OTHER PROVISIONS

1. B and B Transit hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21, and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia. Under this Order, B and B Transit 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, B and B Transit 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 B and B Transit 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, B and B Transit 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 B and B Transit becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and B and B Transit 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 B and B Transit 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 B and B Transit (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 B and B Transit 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 B and B Transit 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 B and B Transit, its successors and assigns.

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

  
James Buckland, President  
B and B Transit

1/14 2014  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

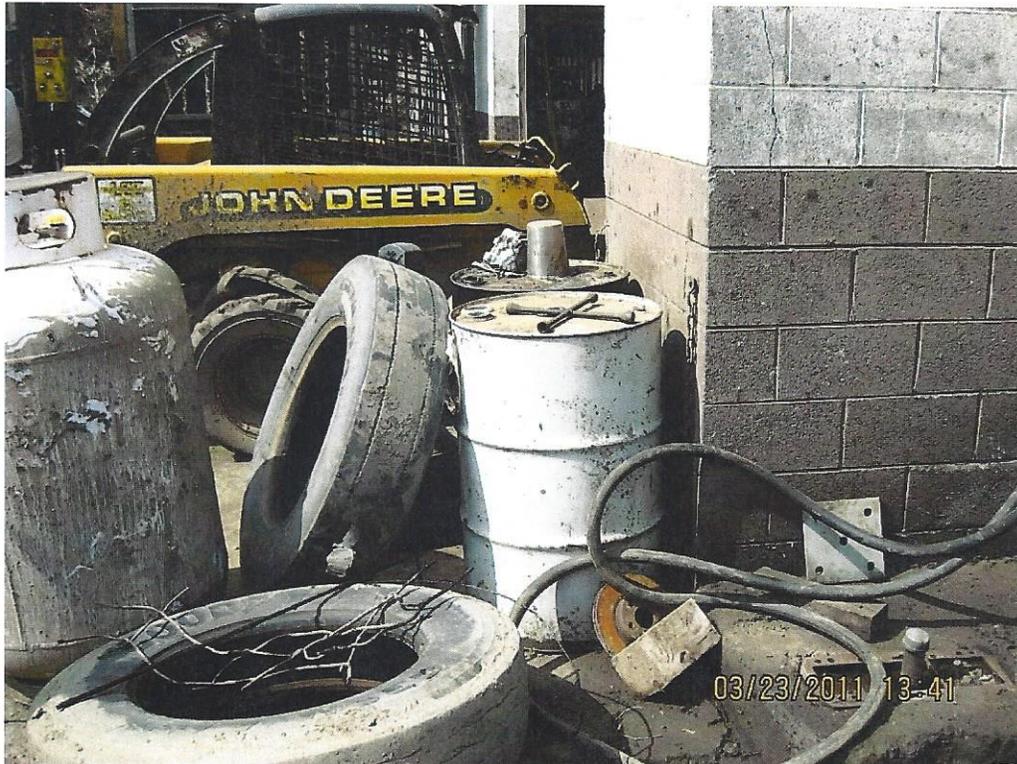
\_\_\_\_\_  
Scott G. Mandirola, Director  
Division of Water and Waste Management

\_\_\_\_\_  
Date

*revised September 2011*



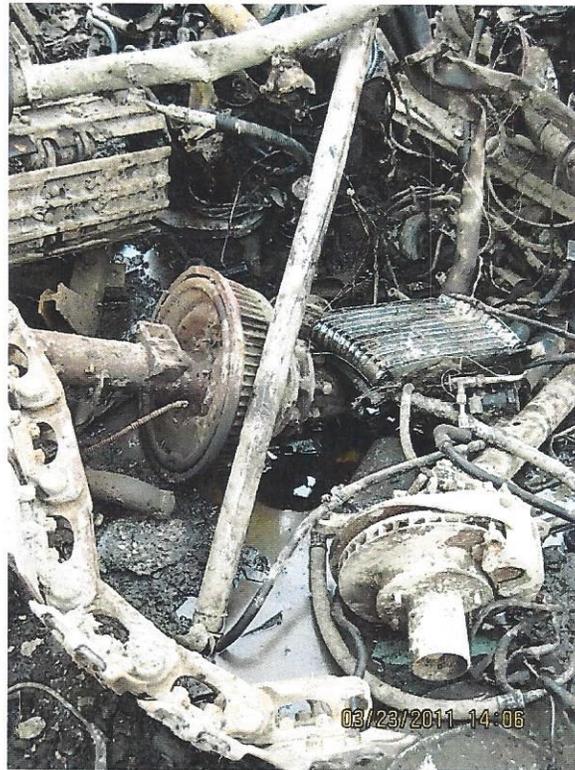
Drums being stored without secondary containment.



Drums being stored without secondary containment.



Pools and stains of petro-chemicals on site.



Pools and stains of petro-chemicals on site.



Pools and stains of petro-chemicals on site.

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:**

B and B Transit

**Receiving Stream:**

Piney Creek

**Treatment System Design Maximum Flow:** \_\_\_\_\_ MGD

**Treatment System Actual Average Flow:** \_\_\_\_\_ MGD (if known)

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

| 1)                                       | Potential for Harm Factor           | Factor Range | FOF# |    |    |    |    |    |    |    |    |    |    |    |    |
|--|-------------------------------------|--------------|------|----|----|----|----|----|----|----|----|----|----|----|----|
|  |                                     |              | 3.a. |    |    |    |    |    |    |    |    |    |    |    |    |
| a)                                       | Amount of Pollutant Released        | 1 to 3       | 1    |    |    |    |    |    |    |    |    |    |    |    |    |
| b)                                       | Toxicity of Pollutant               | 0 to 3       | 0    |    |    |    |    |    |    |    |    |    |    |    |    |
| c)                                       | Sensitivity of the Environment      | 0 to 3       | 0    |    |    |    |    |    |    |    |    |    |    |    |    |
| d)                                       | Length of Time                      | 1 to 3       | 3    |    |    |    |    |    |    |    |    |    |    |    |    |
| e)                                       | Actual Exposure and Effects thereon | 0 to 3       | 0    |    |    |    |    |    |    |    |    |    |    |    |    |
| <b>Average Potential for Harm Factor</b> |                                     |              | 0.8  | No |
| 2)                                       | Extent of Deviation Factor          | Factor Range |      |    |    |    |    |    |    |    |    |    |    |    |    |
|  | Degree of Non-Compliance            | 1 to 3       | 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 -                                  | 20         |            | \$380                    |
| 6.2.b.4 - Compliance/noncompliance history                                 |            |            | \$0                      |
| 6.2.b.6 - Economic benefits -<br>(flat monetary increase)                  | \$200      |            | \$200                    |
| 6.2.b.7 - Public Interest -<br>(flat monetary increase)                    |            |            | \$0                      |
| 6.2.b.8 - Loss of enjoyment -<br>(flat monetary increase)                  |            |            | \$0                      |
| 6.2.b.9 - Investigative costs -<br>(flat monetary increase)                |            |            | \$0                      |
| 6.2.b.10 - Other factors (size of violator)                                |            |            | \$0                      |
| 6.2.b.10 - Additional Other Factors -<br>Increase (flat monetary increase) |            |            | \$0                      |
| 6.2.b.10 - Additional Other Factors -<br>Decrease (flat monetary decrease) |            |            | \$0                      |
| Public Notice Costs (flat monetary increase)                               |            |            | \$0                      |
| 6.2.b.2 - Good Faith - Increase  |            |            | \$0                      |
| 6.2.b.2 - Good Faith - Decrease  |            |            | \$0                      |
| 6.2.b.3 - Cooperation with the Secretary                                   |            |            | \$0                      |
| 6.2.b.5 - Ability to Pay   |            |            | \$0                      |
| <b>Penalty Adjustments</b>   |            |            | <b>\$580</b>             |
| <b>Penalty =</b>   |            |            | <b>\$2,480</b>           |

| Estimated Economic Benefit Item                                    | Estimated Benefit (\$) |
|--|------------------------|
| Monitoring & Reporting   | \$200                  |
| Installation & Maintenance of Pollution Control Equipment          |                        |
| O&M expenses and cost of equipment/materials needed for compliance |                        |
| Permit Application or Modification                                 |                        |
| Competitive Advantage  |                        |
| <b>Estimated Economic Benefit</b>                                  | <b>\$200</b>           |
| <b>Comments:</b> cost of 2nd half 2011 sampling/analysis = \$200   |                        |