



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
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Border Connect Freight Services
Mr. Garrett Gavin
7296 Main Street
Port Sanilac, MI 48469

DATE: November 7, 2014

ORDER NO.: 8200

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. to Border Connect Freight Services.

FINDINGS OF FACT

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

1. Border Connect Freight Services operates a transportation company located in Port Sanilac, Michigan.
2. On August 22, 2014, at approximately 7:30 a.m., West Virginia Department of Environmental Protection (WVDEP) personnel responded to a spill report and discovered yellow paint leaking from a box trailer at the Mineral Wells Rest Area on I-77 (MP 168), in Wood County, West Virginia. The driver represented that he had braked to avoid an accident around Ravenswood, West Virginia (MP 136). At that time, the load shifted, and a tote containing two hundred seventy-five (275) gallons of yellow traffic marking paint was ruptured. The driver represented that he stopped at the Mineral Wells Rest Area around 3:00 a.m. During the investigation, WVDEP personnel observed and documented the following violation of WV Legislative Rule:
 - a. 47CSR2 Section 3.2.f – Border Connect Freight Services caused conditions not allowable in waters of the State by allowing paint to leak from the tote and create a distinctly visible color in Tygart Creek.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Border Connect Freight Services shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of Border Connect Freight Services' Legislative Rule violation, Border Connect Freight Services shall be assessed a civil administrative penalty of three thousand four hundred forty-four dollars (\$3,444) 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:**

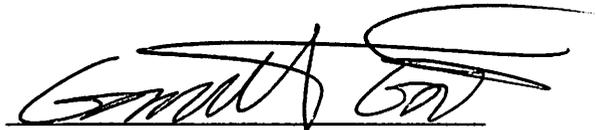
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. Border Connect Freight Services hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Border Connect Freight Services 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, Border Connect Freight Services 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 Border Connect Freight Services 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, Border Connect Freight Services 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 Border Connect Freight Services becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Border Connect Freight Services. Border Connect Freight Services 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 Border Connect Freight Services 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 Border Connect Freight Services (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 Border Connect Freight Services 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 Border Connect Freight Services 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 Border Connect Freight Services, its successors and assigns.
7. This Order shall terminate upon Border Connect Freight Services' notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.


Mr. Garrett Gavin
Border Connect Freight Services

12/11/14

Date

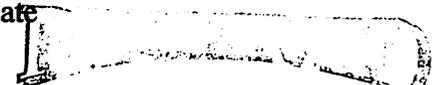
Public Notice begin:

Date

Public Notice end:

Date

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

Date


revised March 2013

DEC 15 2014

ENVIRONMENTAL
ENFORCEMENT

WVDEP Photograph Log



Photo 1. Paint leaking from the truck at the head of the trailer



Photo 2. Paint plume in the ditch line

Border Connect Freight Services
August 22, 2014
Wood County, West Virginia



Photo 3. Paint plume in the ditch line sinking to the bottom



Photo 4. Paint drippings in truck track across the parking lot of the rest area

Border Connect Freight Services
August 22, 2014
Wood County, West Virginia



Photo 5. Paint entering Tygart Creek



Photo 6. Paint plume in Tygart Creek

Border Connect Freight Services
August 22, 2014
Wood County, West Virginia



Photo 7. Paint leaking from its source and running down the ditch



Photo 8. Paint leaking from its source and running down the ditch

Border Connect Freight Services
August 22, 2014
Wood County, West Virginia



Photo 9. Paint flecks across the truck's sides from the wheels



Photo 10. Cleanup efforts in the trailer interior by Miller Environmental

Border Connect Freight Services
August 22, 2014
Wood County, West Virginia



Photo 12. Cleanup efforts in the trailer interior by Miller Environmental

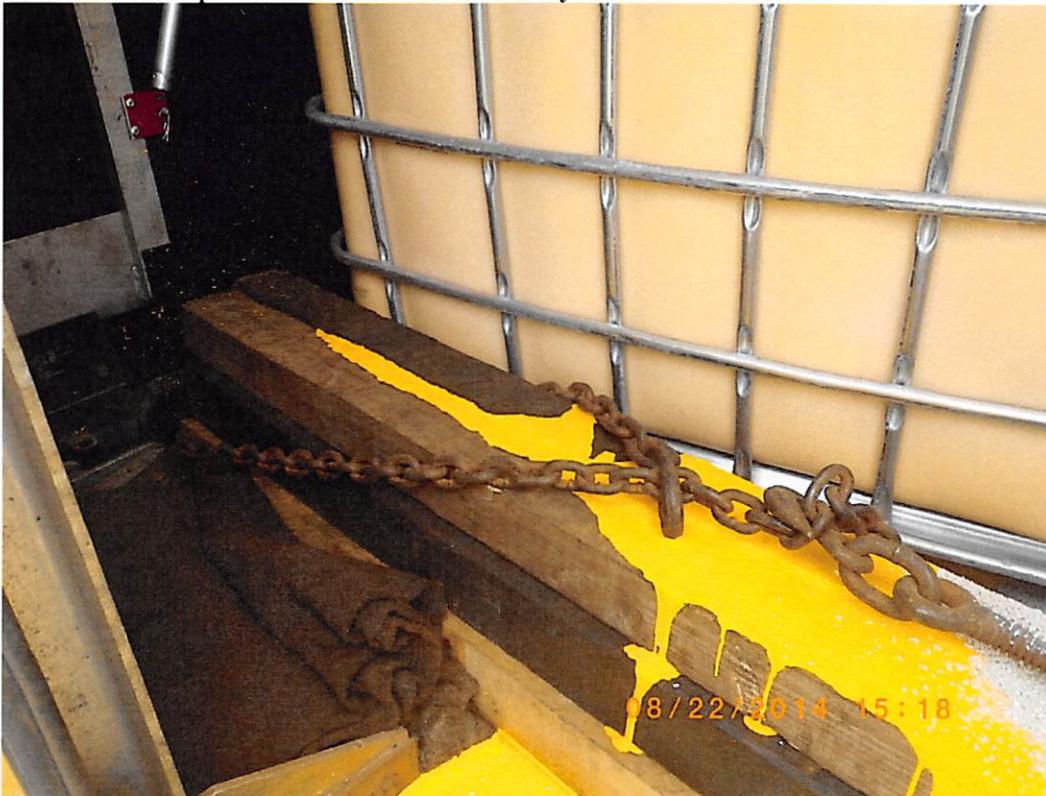


Photo 13. Cleanup efforts in the trailer interior by Miller Environmental

Border Connect Freight Services
August 22, 2014
Wood County, West Virginia



Photo 14. Trailer interior behind punctured tote

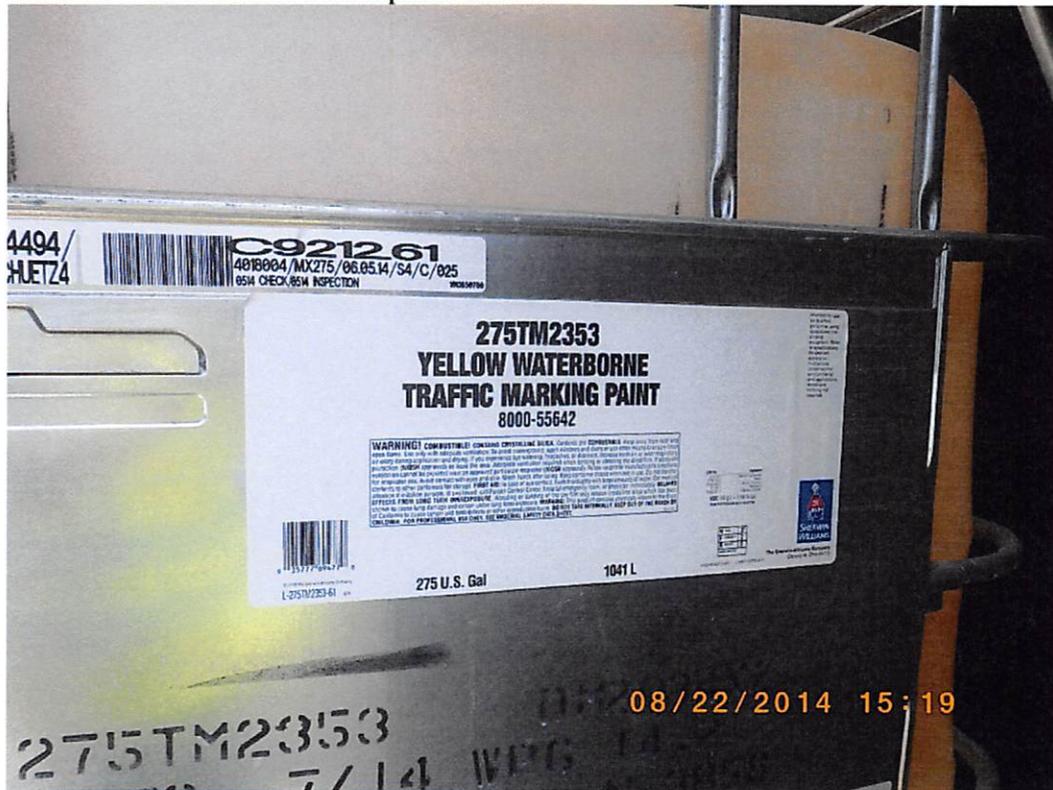


Photo 15. Punctured paint tote label

Border Connect Freight Services
August 22, 2014
Wood County, West Virginia



Photo16. Effluent from ditch line after the paint had been diked

West Virginia Department of Highways Photograph Log



Photo 1. Paint plume in Tygart Creek below the source

Border Connect Freight Services
August 22, 2014
Wood County, West Virginia



Photo 2. Paint entry into the stream at the source



Photo 3. View of Tygart Creek above the source

Border Connect Freight Services
August 22, 2014
Wood County, West Virginia



Photo 4. Puncture point of the tote



Photo 5. Interior of the trailer showing 11 totes

Border Connect Freight Services
August 22, 2014
Wood County, West Virginia



Photo 6. Paint in the ditch line after the ditch was diked



Photo 7. Diking in the ditch line by West Virginia Department of Highways

Border Connect Freight Services
August 22, 2014
Wood County, West Virginia



Photo 8. Paint in the creek beginning to dissipate



Photo 9. Paint removal from the ditch line to the vacuum truck

Border Connect Freight Services
August 22, 2014
Wood County, West Virginia



Photo 10. Additional view of containment inside the trailer



Photo 11. Cleanup in progress and nearly finished

Border Connect Freight Services
August 22, 2014
Wood County, West Virginia



Photo 12. Cleanup finished

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Border Connect Freight Services Receiving Stream:

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#											
			2a											
a)	Amount of Pollutant Released	1 to 3	2											
b)	Toxicity of Pollutant	0 to 3	1											
c)	Sensitivity of the Environment	0 to 3	1											
d)	Length of Time	1 to 3	1											
e)	Actual Exposure and Effects thereon	0 to 3	1											
Average Potential for Harm Factor			1.2	No										
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	2											

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 -			\$0
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
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)*	\$214		\$214
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			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$244
Penalty =			\$3,444

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: *Investigative Costs (personnel and vehicles) = \$214	