



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: Mr. Steve Blankenship
287 Rear, Gallaher Street
Huntington, WV 25705

DATE: January 4, 2012

ORDER NO.: 7413

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 Steve Blankenship.

FINDINGS OF FACT

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

1. Steve Blankenship operates a Handyman & Recycling Service from his residence located at 287 Rear Gallagher Street, Huntington, Cabell County, West Virginia.
2. On June 14, 2011, the Cabell County Office of Emergency Services (Cabell 911 center) received a report of a petroleum product in Four Pole Creek at #2 Chestnut Drive in Huntington. The Huntington Fire Department was dispatched to the spill site to deploy spill control measures. The Huntington Sanitary Department tracked the source of the off road fuel oil to a storm drain at 287 Rear, Gallagher Drive. This was confirmed and documented by personnel from the West Virginia Department of Environmental Protection (WVDEP).
3. On June 14, 2011, WVDEP personnel met and interviewed Steve Blankenship at this location. Steve Blankenship explained that he had a load of metal on his truck and had hosed out a metal tank he had been given as scrap before taking the load to an area recycling yard. Steve Blankenship also explained that residual fuel (heel) was hosed out and did escape this tank and entered the storm drain next to the driveway.

4. Allowing diesel fuel and contaminated water to escape from this fuel tank and enter stormwater drainage to Four Pole Creek, a state water, in sufficient quantity and duration to cause a condition not allowed in state waters, is a violation of Title 47, Series 02, (Requirements Governing Water Quality Standards Rule) specifically; §47-2-3.2.a.
5. On September 20, 2011, WVDEP and Steve Blankenship met to discuss the terms and conditions of this Order.
6. On September 23, 2011, WVDEP received financial documents from Steve Blankenship. WVDEP personnel reviewed the submitted economic information and determined that Steve Blankenship has a reduced ability to pay the civil administrative penalty.

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. Steve Blankenship shall immediately cease discharging any petroleum waste or petroleum contaminated wastewater into the waters of the state or any conveyance to a water of the state.
2. Because of Steve Blankenship's Legislative Rule violations, Steve Blankenship shall be assessed a civil administrative penalty of one thousand two hundred thirty dollars (\$1,230) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

Payment 1 in the amount of \$102.50 due on or before March 1, 2012.

Payment 2 in the amount of \$102.50 due on or before April 1, 2012.

Payment 3 in the amount of \$102.50 due on or before May 1, 2012.

Payment 4 in the amount of \$102.50 due on or before June 1, 2012.

Payment 5 in the amount of \$102.50 due on or before July 1, 2012.

Payment 6 in the amount of \$102.50 due on or before August 1, 2012.

Payment 7 in the amount of \$102.50 due on or before September 1, 2012.

Payment 8 in the amount of \$102.50 due on or before October 1, 2012.

Payment 9 in the amount of \$102.50 due on or before November 1, 2012.

Payment 10 in the amount of \$102.50 due on or before December 1, 2012.

Payment 11 in the amount of \$102.50 due on or before January 1, 2013.

Payment 12 in the amount of \$102.50 due on or before February 1, 2013.

Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. Payment shall be mailed to:

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

OTHER PROVISIONS

- 1. Steve Blankenship 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, Steve Blankenship 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, Steve Blankenship 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 Steve Blankenship 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, Steve Blankenship 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 Steve Blankenship becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and 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 Steve Blankenship 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 Steve Blankenship (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 Steve Blankenship 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 Steve Blankenship 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 Steve Blankenship, its successors and assigns.**

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

Steven L. Blankenship
Steve Blankenship

2-17-12
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

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1. Introduction

2. Methodology

3. Results

4. Discussion

5. Conclusion

6. References

7. Appendix

8. Acknowledgements

9. Contact Information

10. Disclaimer



Petroleum product pooling in creek.



Storm drain with residence in background



Staining on the ground from the petroleum product



Valves and fittings with staining underneath from petroleum product.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Mr. Steve Blankenship

Receiving Stream:

Four Pole Creek

Treatment System Design Maximum Flow: N/A MGD

Treatment System Actual Average Flow: N/A MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			4											
a)	Amount of Pollutant Released	1 to 3	1											
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	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.

		Extent of Deviation from Requirement		
		Major	Moderate	Minor
Potential for Harm to Human Health or the Environment	Major	\$8,000 to \$10,000	\$6,000 to \$8,000	\$5,000 to \$6,000
	Moderate	\$4,000 to \$5,000	\$3,000 to \$4,000	\$2,000 to \$3,000
	Minor	\$1,500 to \$2,000	\$1,000 to \$1,500	Up to \$1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
4	Minor	Major	\$2,000	1	\$2,000
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
0	FALSE	FALSE	FALSE	1	\$0
Total Base Penalty					\$2,000

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		\$400
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)			\$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			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay		60	(\$1,200)
Penalty Adjustments			(\$770)
Penalty =			\$1,230

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:	