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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  
HAZARDOUS WASTE MANAGEMENT ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18  
AND THE  
GROUNDWATER PROTECTION ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: Executive Air  
ATTN: Mr. Scott Miller  
400 Eagle Mountain Road  
Charleston, WV 25311

DATE: July 20, 2016

ORDER NO.: MM-16-16

**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. and Chapter 22, Article 12, Section 1 et seq. to Executive Air.

**FINDINGS OF FACT**

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

1. Executive Air operates a General Aviation Facility located in Charleston, Kanawha County, West Virginia and has been assigned EPA ID No. WVD988775573.
2. On November 4, 2015, US EPA Region 3 notified West Virginia Department of Environmental Protection (WVDEP) of the discovery of thirty-seven (37) drums containing liquid wastes, reportedly generated by Executive Air, at a location near the intersection of Park Avenue and Washington Street West in Charleston, West Virginia. The containers were sampled on November 9, 2015, and twenty-seven (27) of the containers were determined to be RCRA hazardous wastes, with EPA waste codes D001, D008, D018, and D039.
3. On November 20, 2015, WVDEP personnel conducted a Spill Investigation at Executive Air. During the investigation, it was discovered that the rain water release valve for the fuel tank secondary containment was open, allowing an unknown quantity of fuel to

Promoting a healthy environment.

escape to the environment. A violation of the following section of WV Legislative Rules was observed and documented:

- a. **47CSR58 Section 7.1 – Executive Air allowed a petroleum product to flow onto the land surface in such a manner that could impact groundwater quality.**
4. **On December 2, 2015, WVDEP personnel conducted a Compliance Evaluation Inspection (CEI) at Executive Air. During the inspection, violations of the following sections of the Code of Federal Regulations were observed and documented:**
- a. **40CFR262.12(c) – Executive Air offered hazardous waste, specifically the aforementioned drums, to a transporter who had not obtained an EPA ID number.**
  - b. **40CFR262.11- Executive Air failed to make a hazardous waste determination for M.A.R.S. cart fuel filters and fuel soaked PIG pads.**
  - c. **40CFR279.22(c)(1) – Executive Air failed to clearly mark or label tanks and containers of used oil with the words "Used Oil".**
  - d. **40CFR262.34(a)(2) as referenced by 40CFR262.34(d)(4) –Executive Air failed to label containers clearly with an Accumulation Start Date.**
  - e. **40CFR262.34(a)(3) as referenced by 40CFR263.34(d)(4) – Executive Air failed to label containers clearly with the words "Hazardous Waste".**
  - f. **40CFR265.173(a) as referenced by 40CFR262.34(d)(2) – Executive Air failed to keep containers of hazardous waste closed when not adding or removing waste.**

As a result of the aforementioned violations, Notice of Violation (NOV) No. 1512-254 was issued to Executive Air.

5. **On February 11, 2016, WVDEP personnel responded to a complaint concerning continued storage of waste at the facility, conducted a records review of the facility, and documented violations of the following sections of the Code of Federal Regulations and WV Legislative Rules.**
- a. **40CFR262.11 – Executive Air failed to complete a hazardous waste determination for the aforementioned twenty-seven (27) drums of hazardous waste.**
  - b. **40CFR265.51 as referenced by 40CFR262.34(a)(4) – Executive Air failed to develop a hazardous waste contingency plan.**
  - c. **40CFR265.16 as referenced by 40CFR262.34(a)(4) – Executive Air failed to provide training and written job descriptions for their employees.**
  - d. **40CFR262.20(a)(1) - Executive Air initially failed to prepare a hazardous waste manifest for the aforementioned drums to document and track waste leaving the facility. Executive Air then failed, after having been notified, to ensure proper completion of the manifest for final removal to a designated facility for disposal.**
  - e. **40CFR268.7 as referenced by 40CFR262.34(a)(4) - Executive Air failed to perform Land Disposal Restriction testing and tracking requirements.**
  - f. **33CSR20 Section 4.1 - Executive Air failed to re-notify the Secretary of hazardous waste activity.**

As a result of the aforementioned violations, NOV No. 1602-258 was issued to Executive Air.

6. On June 9, 2016, WVDEP personnel and representatives of Executive Air met to discuss the terms and conditions of this Order. During this meeting, WVDEP personnel confirmed that Executive Air had achieved compliance with all of the aforementioned Codes and Rules.

### **ORDER FOR COMPLIANCE**

Now, therefore, in accordance with Chapter 22, Article 18, 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. Executive Air shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Because of Executive Air's Code of Federal Regulations violations, Executive Air shall be assessed a civil administrative penalty of sixty-eight thousand three hundred nine dollars (\$68,309) 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. Executive Air 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, Executive Air 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, Executive Air 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 Executive Air 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, Executive Air 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 Executive Air becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Executive Air 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 Executive Air 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 Executive Air (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 Executive Air 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 Executive Air 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 Executive Air, its successors and assigns.
7. This Order shall terminate upon Executive Air's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
\_\_\_\_\_  
Mr. Scott Miller  
Executive Air

Sept 8, 2016  
\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

RECEIVED

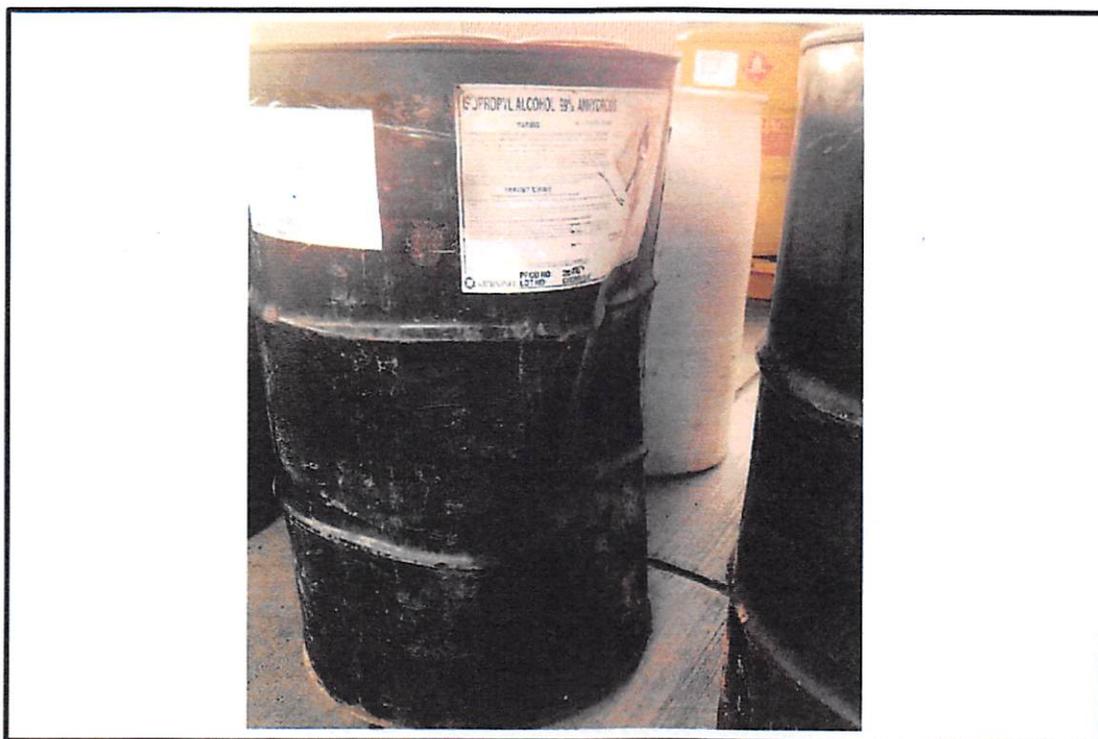
SEP 08 2016

ENVIRONMENTAL  
ENFORCEMENT

Photo Attachment

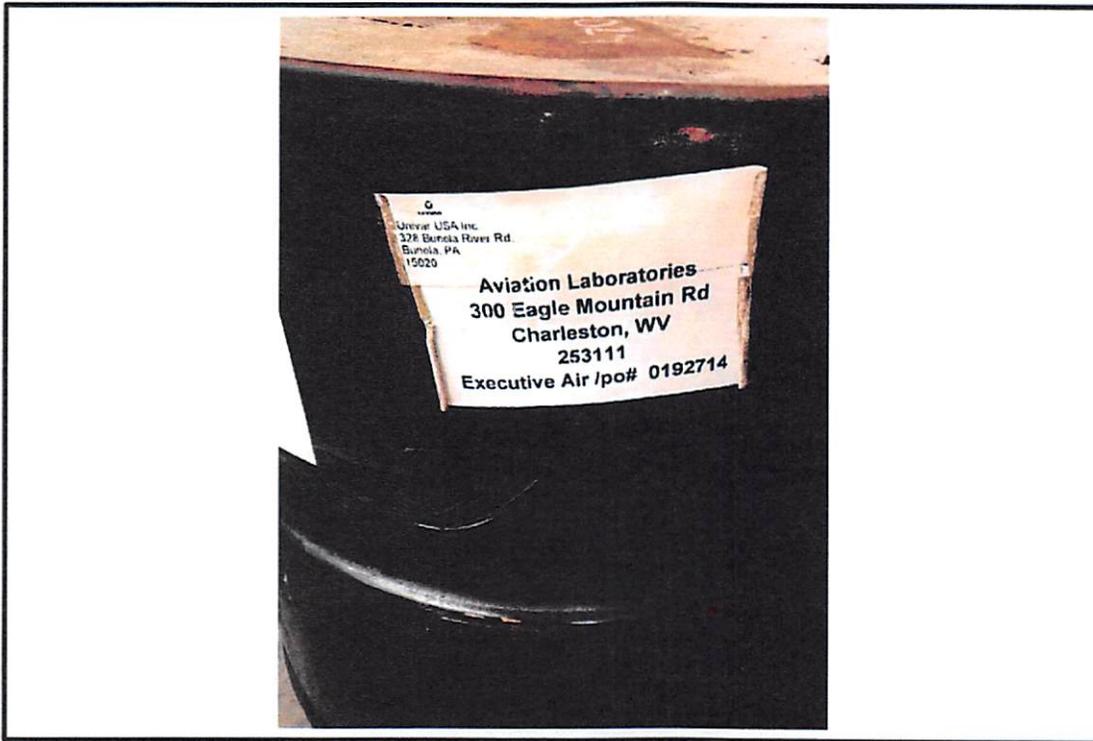


11/9/2015 – Drums of Executive Air waste liquids at WVDEP's Elkview location.

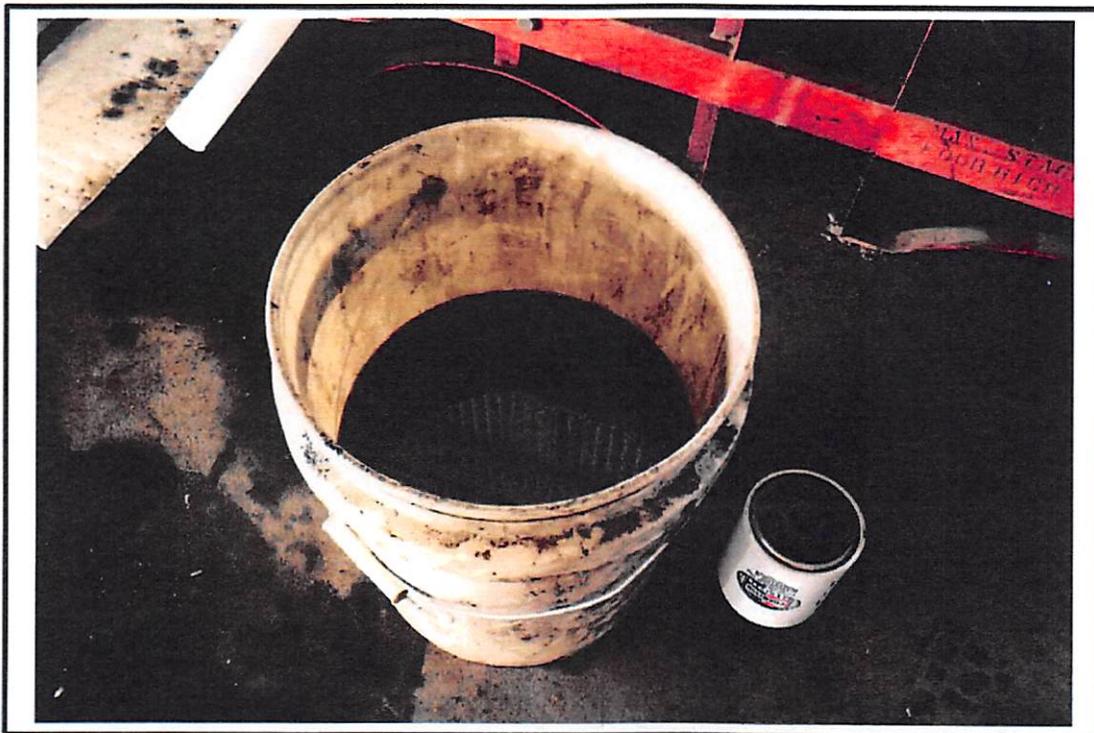


11/9/2015 – Damaged Executive Air waste drum at WVDEP's Elkview location.

Photo Attachment



11/9/2015 – Drum of Executive Air waste at WVDEP’s Elkview location with facility name on label.



12/2/2015 – Used Oil not marked or labeled with the words “Used Oil” at Executive Air facility.

Photo Attachment



12/2/2015 – Absorbent pads soaked with aviation fuels at Executive Air facility.

## Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party: Executive Air EPA ID Number: WVD988775573

**Generator Classification: Episodic LQG**

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

1)	Potential for Harm Factor	Factor Range	FOF#												
			4a	4b	4e	4f	5a	5c	5d	5e	5f				
a)	Harm to RCRA Program	1 to 3	3	3	1	1	3	2	3	3	2				
b)	Probability of Exposure	0 to 3	2	2	0	1	2	2	2	2	0				
c)	Potential Seriousness of Contamination	1 to 3	2	2	2	2	2	2	2	2	2				
<b>Average Potential for Harm Factor</b>			2.3	2.3	1	1.3	2.3	2	2.3	2.3	1.3	No	No	No	No
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	1	1	3	2	3	3	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.



		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
4a	Major	Major	\$8,660	1	\$8,660
4b	Major	Major	\$8,660	1	\$8,660
4e	Minor	Minor	\$1,000	1	\$1,000
4f	Moderate	Minor	\$2,330	1	\$2,330
5a	Major	Major	\$8,660	1	\$8,660
5c	Moderate	Moderate	\$4,000	1	\$4,000
5d	Major	Major	\$8,660	1	\$8,660
5e	Major	Major	\$8,660	1	\$8,660
5f	Moderate	Minor	\$2,330	1	\$2,330
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
<b>Total Base Penalty</b>					<b>\$52,960</b>

**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	(\$5,296)
6.2.b.2 - Willfulness and/or negligence	30		\$15,888
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)	\$4,727		\$4,727
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)	\$30		\$30
<b>Penalty Adjustments</b>			<b>\$15,349</b>
<b>Penalty =</b>			<b>\$68,309</b>

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	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b> Economic benefit not warranted.	