



---

west virginia department of environmental protection

---

Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: (304) 926-0495  
Fax: (304) 926-0463

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  
AND THE  
GROUNDWATER PROTECTION ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: Elkins Metal Recycling  
Andrew Gongola  
21 High St.  
Elkins, WV 26241

DATE: July 23, 2012

ORDER NO.: 7634

**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 Elkins Metal Recycling (hereinafter "Elkins").

**FINDINGS OF FACT**

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

1. Elkins operates a metal recycling facility located in Randolph County, West Virginia. Elkins was issued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG610345, on May 4, 2010.
2. On January 9, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia Legislative Rule and Elkins' WV/NPDES permit were observed and documented:
  - a. Elkins failed to develop and implement a Groundwater Protection Plan (GPP), a violation of WV/NPDES Permit Section B.

- b. Elkins failed to document inspections and trainings, a violation of WV/NPDES Permit Section B.17.A.a.2.
- c. Elkins did not implement good housekeeping practices, because it failed to clean petroleum based spills, a violation of WV/NPDES Permit Section B.17.A.a.G.2.A. Petroleum based fluids were floating on puddles of water throughout the property.
- d. Elkins failed to report spills, a violation of WV Legislative Rule 47CSR11 Section 2.a.
- e. Elkins failed to maintain the proper quality assurance procedures when handling samples, a violation of WV/NPDES Permit Appendix A.II.1.
- f. Elkins' Storm Water Pollution Prevention Plan (SWPPP) was not revised to address benchmark exceedances, a violation of WV/NPDES Permit Section B.7.

As a result of the aforementioned violations, Notice of Violation (NOV) No. i12-42-004-203 was issued to Elkins.

3. On January 9, 2012, WVDEP personnel conducted a review of facility records from January 2009 through December 2011. During this review, twenty-one (21) benchmark exceedances of Elkins' WV/NPDES permit parameters (Section B.7) were observed and documented (Table One).
4. On March 15, 2012, WVDEP personnel received a letter from Elkins, outlining its plan to comply with the NOV issued on January 9, 2012.
5. On April 9, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of West Virginia Legislative Rule and Elkins' WV/NPDES permit were observed and documented:
  - a. Elkins failed to implement good housekeeping practices, a violation of WV/NPDES Permit Section B.17.A.a.G.2.A. Specifically, a dump site, oil spillage on the ground, and leaking drums were observed.
  - b. Elkins failed to provide secondary containment, a violation of WV Legislative Rule 47CSR58 Section 4.8.
  - c. Elkins failed to remediate spills, a violation of WV Legislative Rule 47CSR11 Section 2.5.a.

As a result of the aforementioned violations, NOV No. i12-42-048-203 was issued to Elkins.

6. In accordance with WV Legislative Rule 47CSR10 Section 13.6.b.2.A, the Director may require any person authorized by a general permit to apply for and obtain an individual permit when the discharger is a significant contributor of pollution and/or the discharger is not in compliance with the conditions of the general permit.
7. On July 12, 2012, WVDEP personnel and a representative of Elkins met to discuss the terms and conditions of this Order.

AG

**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. Elkins shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Based upon the numerous permit compliance deficiencies and benchmark exceedances noted in the Findings of Fact of this Order, it has been determined that Elkins is a significant contributor of pollution. Therefore, in accordance with WV Legislative Rule 47CSR10 Section 13.6.b.2.A, Elkins shall, within thirty (30) days of the effective date of this order, submit an administratively complete application for an individual WV/NPDES water pollution control permit.
3. Within thirty (30) days of the effective date of this Order, Elkins shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Elkins will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
NE Regional Environmental Enforcement Office  
HC63 Box 2545  
Romney, WV 26757**

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.

4. Because of Elkins' permit and WV Legislative Rule violations, Elkins shall be assessed a civil administrative penalty of sixteen thousand eight hundred thirty dollars (\$16,830) 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 be mailed to:**

76

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

**OTHER PROVISIONS**

1. Elkins hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 and Chapter 22, Article 12, Section 11 of the Code of West Virginia. Under this Order, Elkins 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, Elkins 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 Elkins 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, Elkins 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 Elkins 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 Elkins 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 Elkins (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 Elkins 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 Elkins to additional penalties and injunctive relief in accordance with the applicable law.

Ab

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 Elkins, its successors and assigns.
7. This Order shall terminate upon Elkins' notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Andrew Gongola  
Elkins Metal Recycling

7-30-12

Date

Public Notice begin:



Date

AUG -1 2012

Public Notice end:

ENVIRONMENTAL  
ENFORCEMENT

Date

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

Date

*revised September 2011*



Table One:  
Elkins Benchmark Exceedance Summary

Outlet 001 Benchmark Exceedances - January 2009 through December 2011							
Date	Parameter	Units	Monitoring Cut-off Concentration	Sample 1	Sample 2	Reported avg. yearly	% Exceedance
2011	TSS	mg/l	100.000	285	274	279.5	180%
2011	Copper	mg/l	0.064	0.63	0.393	0.5115	704%
2011	Lead	mg/l	0.082	0.4582	0.401	0.4296	426%
2011	Zinc	mg/l	0.117	0.721	0.855	0.788	574%
2011	Aluminum	mg/l	0.750	4.41	2.64	3.525	370%
2011	Iron	mg/l	1.000	9.79	7.22	8.505	751%
2011	COD	mg/l	120.000	69	346	207.5	73%
2010	Copper	mg/l	0.064	0.424	0.004	0.214	236%
2010	Lead	mg/l	0.082	0.518	0.009	0.2635	223%
2010	Zinc	mg/l	0.117	1.024	0.002	0.513	338%
2010	Aluminum	mg/l	0.750	3.04	3.533	3.2865	338%
2010	Iron	mg/l	1.000	10.83	8.792	9.811	881%
2010	COD	mg/l	120.000	374	446	410	242%
2010	TSS	mg/l	100.000	4	584	294	194%
2009	TSS	mg/l	100.000	422	972	697	597%
2009	Zinc	mg/l	0.117	1.349	2.344	1.8465	1478%
2009	Aluminum	mg/l	0.750	3.845	6.487	5.166	589%
2009	Iron	mg/l	1.000	17.082	19.137	18.1095	1711%
2009	COD	mg/l	120.000	462	444	453	278%
2009	Copper	mg/l	0.064	0.405	0.001	0.203	219%
2009	Lead	mg/l	0.082	1.006	0.0016	0.5038	517%

Outlet 001 Total: 21 Exceedances

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Elkins Metal Recycling

Receiving Stream:

Tygart River

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	2b	2c	2d	2e	2f	5a	5c					
a)	Amount of Pollutant Released	1 to 3	1	1	2	1	1	1	2	2					
b)	Toxicity of Pollutant	0 to 3	0	0	2	0	1	0	2	2					
c)	Sensitivity of the Environment	0 to 3	0	0	1	0	1	0	1	1					
d)	Length of Time	1 to 3	1	1	1	1	1	1	2	1					
e)	Actual Exposure and Effects thereon	0 to 3	0	0	2	0	1	0	2	2					
<b>Average Potential for Harm Factor</b>			0.4	0.4	1.6	0.4	1	0.4	1.8	1.6	No	No	No	No	
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	2	2	2	2	1	2	2	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 -	10		\$1,680
6.2.b.4 - Compliance/noncompliance history	10		\$1,680
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		10	(\$1,680)
6.2.b.3 - Cooperation with the Secretary		10	(\$1,680)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$30</b>
<b>Penalty =</b>			<b>\$16,830</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>	

**Palmer, Janice D**

---

**From:** Palmer, Janice D  
**Sent:** Monday, July 23, 2012 10:56 AM  
**To:** Mandirola, Scott G; Hickman, Joseph M; Bandy, Jeremy W; Simmons, David C; McGee, Laura E; Dolly, Robin C; Kanehl, Michael K; Moellendick, Shyrel L  
**Cc:** Palmer, Janice D; Noll, Jeanne  
**Subject:** Elkins Metal Recycling #7634 revised  
**Attachments:** Elkins Metal Recycling #7634 revised 07.23.12.pdf

Please see attached correspondence.

*Janice Palmer*

WV-DEP-EE

Mail Code: 031328

601 57<sup>th</sup> Street

Charleston, WV 25304

Telephone: (304) 926-0499 ext. 1326

Fax: (304) 926-0488

Email: [janice.d.palmer@wv.gov](mailto:janice.d.palmer@wv.gov)