



west virginia department of environmental protection

Environmental Enforcement
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0470 Fax: (304) 926-0488

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

April 4, 2013

Catherine and David Hott
Great Falls Septic Service
c/o J. Michael Cassell
Cassell & Prinz, PLLC
120 N. George Street, Suite 200
Charles Town, WV 25414

CERTIFIED RETURN RECEIPT REQUESTED

91 7199 9991 7032 6242 6174

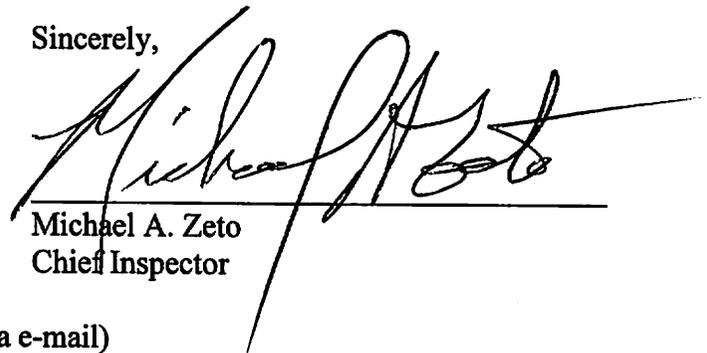
**RE: Violation of Chapter 22, Article 11
of the WV State Code**

Dear Mr. & Mrs. Hott:

Enclosed is revised CONSENT ORDER NUMBER 7757 dated April 4, 2013. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to Catherine and David Hott violating Chapter 22, Article 11 of the WV State Code at its facility located in Charles Town, Jefferson County, West Virginia. This revision is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,



Michael A. Zeto
Chief Inspector

Enclosure

cc: Scott G. Mandirola, Director, DWWM (via e-mail)
Yogesh Patel, Asst. Director, DWWM/Permits (via e-mail)
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
Laura McGee, Environmental Resources Specialist, EE (via e-mail)
Robin C. Dolly, Environmental Inspector Supervisor, EE/WW (via e-mail)
Michael Kanehl, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)

Promoting a healthy environment.



west virginia department of environmental protection

Division of Water and Waste Management
601 57th 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**

TO: Great Falls Septic Service
Catherine and David Hott
34176 Charles Town Pike
Purcellville, VA 20132

DATE: April 4, 2013

ORDER NO.: 7757

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 Great Falls Septic Service (hereinafter "Hott").

FINDINGS OF FACT

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

1. Hott operates a trucking/salvage yard facility located in Jefferson County, West Virginia.
2. On October 5, 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 State Code and WV Legislative Rules were observed and documented:
 - a. 22-15-10 and 33CSR1 Section 7 – Hott created, contributed to, or operated an open dump on its property. The open dump consisted of batteries and burnt material.
 - b. 22-11-8 and 47CSR10 Section 3 – Hott operated a trucking/salvage yard facility without authorization pursuant to a WV/NPDES Multi Sector Industrial Storm Water Permit.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. OD11-19-107-203 and I11-19-106-203 were issued to Hott.

Promoting a healthy environment.

3. On November 4, 2011, in response to the NOVs issued on October 5, 2011, Hott provided a compliance schedule to WVDEP personnel. The schedule proposed complete compliance by December 1, 2011.
4. On January 13, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and WV Legislative Rules were observed and documented:
 - a. 22-15-10 and 33CSR1 Section 7 – Hott created, contributed to, or operated an open dump on its property.
 - b. 22-11-8 and 47CSR10 Section 3 – Hott operated a trucking/salvage yard facility without authorization pursuant to a WV/NPDES Multi Sector Industrial Storm Water Permit.
 - c. 33CSR4 Section 3.6 – Hott failed to properly handle/store batteries to prevent contamination.

As a result of the aforementioned violations, NOV Nos. I12-19-106-203, I12-19-107-203 and I12-19-108-203 were issued to Hott.

5. On February 8, 2012, Gordon Associates, a representative of Hott, provided receipts for solid waste disposal and a truck consignment sale agreement to WVDEP personnel.
6. On February 13, 2012, WVDEP personnel, along with Division of Natural Resources Police, conducted an inspection of the facility. During the inspection, the following were observed and documented:
 - a. The site had been cleaned.
 - b. Hott confirmed that some of the equipment and trucks were moved to another site in Jefferson County, West Virginia on Route 51 and Shirley Road.
 - c. WVDEP personnel advised Hott to obtain a WV/NPDES permit for the Route 51 site.
7. On April 20, 2012, WVDEP personnel requested an update from Gordon Associates concerning the status of the NOVs.
8. On April 30, 2012, WVDEP personnel received a response from Gordon Associates stating that it had no recent conversation with Hott. The correspondence also stated that further communication from WVDEP should be conducted with Hott.
9. On April 30, 2012, WVDEP personnel conducted an inspection of the Route 51 facility. During the inspection, the following violation of WV State Code and WV Legislative Rules was observed and documented:
 - a. 22-11-8 and 47CSR10 Section 3 – Hott operated a trucking/salvage yard facility without authorization pursuant to a WV/NPDES Multi Sector Industrial Storm Water Permit.

As a result of the aforementioned violation, NOV No. I12-19-058-203 was issued to Hott.

10. On June 14, 2012, WVDEP personnel received correspondence from Nora Jovel, a representative of Hott, stating that Hott's WV/NPDES permit application would be submitted by July 1, 2012.
11. On November 13, 2012, WVDEP personnel conducted a record review and determined that the required WV/NPDES permit application had not been received.
12. On February 27, 2013, WVDEP personnel and representatives of Hott met to discuss the terms and conditions of this Order.

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. Hott shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, Hott shall submit an administratively complete application for WV/NPDES Multi Sector Industrial Storm Water Permit coverage for its Route 51 facility. This application shall be submitted to:

**Permitting Section
DWWM
ATTN: Patrick D. Burch
601 57th Street
Charleston, WV 25304**

3. Because of Hott's West Virginia Code and Legislative Rule violations, Hott shall be assessed a civil administrative penalty of seven thousand eight hundred eighty dollars (\$7,880) 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:**

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

OTHER PROVISIONS

1. Hott 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, Hott 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, Hott 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 Hott 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, Hott 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 Hott 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 Hott 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 Hott (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 Hott 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 Hott 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 Hott, its successors and assigns.

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

Catherine Hott
David Hott

Catherine and David Hott
Great Falls Septic Service

4/16/13

Date

Public Notice begin:

RECEIVED

Date

Public Notice end:

APR 18 2013

Date

ENVIRONMENTAL
ENFORCEMENT

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

Date

revised September 2011

**Great Falls Septic Service
Pictures
April 30, 2012**



Tires in back of truck



Salvage vehicles



Truck being repaired



Containers of scrap materials

**Great Falls Septic Service
Pictures
January 13, 2012**



Batteries stored outside



Scrap metal stored outside



Old equipment



Demolition waste



Broken batteries inside a dumpster

**Great Falls Septic Service
Pictures
October 5, 2011**



Batteries stored outside



Unattended burn of solid waste



Salvage yard



Vehicles in the woods

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Great Falls Septic Service **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#											
			2b	4b	9a									
a)	Amount of Pollutant Released	1 to 3	1	1	1									
b)	Toxicity of Pollutant	0 to 3	0	0	0									
c)	Sensitivity of the Environment	0 to 3	0	0	0									
d)	Length of Time	1 to 3	1	2	3									
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0									
Average Potential for Harm Factor			0.4	0.6	0.8	No								
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	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 -	30		\$1,620
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,370		\$1,370
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		10	(\$540)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$2,480
Penalty =			\$7,880

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	\$1,170
Competitive Advantage	
Estimated Economic Benefit	\$1,370
Comments: Sampling (\$200*1yr-\$200) and \$1,170 for application fee.	