



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

TO: Hercules International Inc.
Bill Walls, General Manager
6060 Kyle Lane
Huntington, WV 25702

DATE: June 13, 2014

ORDER NO.: MM-14-016

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., Chapter 22, Article 12, Section 1 et seq., and Chapter 22, Article 18, Section 1 et seq. to Hercules International Inc. (hereinafter "Hercules International").

FINDINGS OF FACT

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

1. Hercules International operates a manufacturing facility for tractor trailer brake components located in Huntington, Cabell County, West Virginia.
2. On January 2, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of The Code of Federal Regulations, West Virginia State Code, and West Virginia Legislative Rule were observed and documented:

- a. 40CFR279.22(b)-The facility failed to store used oil in containers that were in good condition and not leaking.
- b. 40CFR279.22(c)(1)-The facility failed to properly label containers of used oil with the words "Used Oil."
- c. 40CFR279.22(d)-The facility failed to stop, contain and properly manage the release of used oil.
- d. 22-11-8 and 47CSR10 Section 3.1-Hercules International failed to obtain a WV/NPDES Permit for Storm Water Associated with Industrial Activity.
- e. 47CSR58 Section 4.4.a-Hercules International did not have adequate spill prevention and control facilities and procedures as well as secondary containment for its storage of used oil.
- f. 47CSR58 Section 4.4.b-Hercules International distribution facilities and used oil storage area were not designed/installed in such a manner so as to prevent spills and leaks from contaminating groundwater.
- g. 47CSR58 Section 4.11-Hercules International did not have a comprehensive Groundwater Protection Plan.
- h. 47CSR58 Section 7.1-Hercules International allowed oil to escape the facility's used oil storage area in such a manner that could impact groundwater quality.
- i. 47CSR11 Section 2.2.a-Hercules International failed to immediately report and notify the Office of Water Resources' Emergency Notification Number of any spill or accidental discharge of pollutants.

As a result of the aforementioned violations, a Notice of Violation (NOV) was issued to Hercules International.

3. On March 28, 2014, WVDEP personnel conducted a follow-up inspection of the facility. During the inspection, WVDEP personnel observed that the leaking containers of used oil had been removed from the facility, and the contaminated soil had been excavated. During this inspection, two soil samples were collected from the southwestern corner of the back parking lot.
4. On May 1, 2014, WVDEP personnel and a representative of Hercules International 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., Chapter 22, Article 12, Section 1 et seq., Chapter 22, Article 18, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Hercules International shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within forty-five (45) days of the effective date of this Order, Hercules International shall electronically submit an administratively complete application for WV/NPDES permit coverage for the regulated activity. Any questions regarding the application process shall be directed to WVDEP DWWM-Permitting Section at (304) 926-0495.

3. Upon the effective date of this Order, Hercules International shall immediately take all measures to properly manage the release of used oil.
4. Upon the effective date of this Order, Hercules International shall immediately label all containers storing used oil with the words, "Used Oil."
5. Upon the effective date of this Order, Hercules International shall immediately begin storing used oil only in containers that are in good condition and not leaking, as described in Code of Federal Regulations 40 CFR 279.22(b). In accordance with the Code, containers shall have no severe rusting, no apparent structural defects or deterioration, and no visible leaks.
6. Within thirty (30) days of the effective date of this Order, Hercules International shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Hercules International will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to Order No. MM-14-016. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
Christopher M. Gatens
WVDEP/DWWM/EE/HW
601 57th Street SE
Charleston, WV 25304**

A copy of this plan shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

A copy of this plan shall also be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th 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.

7. Because of Hercules International's Code of Federal Regulations, West Virginia State Code, and West Virginia Legislative Rule violations, Hercules International shall be assessed a civil administrative penalty of fourteen thousand four hundred sixty-eight

dollars (\$14,468) to be paid to the West Virginia Department of Environmental Protection as follows:

Nine thousand one hundred ninety-eight dollars (\$9,198) shall be deposited in the Hazardous Waste Management Fund within thirty (30) days of the effective date of this Order.

Five thousand two hundred seventy dollars (\$5,270) shall be deposited 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. Hercules International hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 18, Section 20, Chapter 22, Article 12, Section 11, and Chapter 22, Article 11, Section 21 of the Code of West Virginia. Under this Order, Hercules International 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, Hercules International 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 Hercules International 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, Hercules International 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 Hercules International becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Hercules International 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 Hercules International 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 Hercules International (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 Hercules International 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 Hercules International 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 Hercules International, its successors and assigns.
7. This Order shall terminate upon Hercules International's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Bill Walls

Bill Walls, General Manager
Hercules International Inc.

6/19/14

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised June 2013

RECEIVED

JUN 23 2014

ENVIRONMENTAL
ENFORCEMENT

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		\$740
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,170		\$1,170
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	(\$370)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$1,570
Penalty =			\$5,270

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	\$1,170
Competitive Advantage	
Estimated Economic Benefit	\$1,170
Comments: Avoided WV/NPDES permit application fee	

Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party: Hercules International Inc. **EPA ID Number:** _____

Generator Classification: Non-Handler

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			2a.	2b.	2c.									
a)	Harm to RCRA Program	1 to 3	1	1	1									
b)	Probability of Exposure	0 to 3	2	0	3									
c)	Potential Seriousness of Contamination	1 to 3	1	1	1									
Average Potential for Harm Factor			1.3	0.7	1.7	No								
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	2	2	2									

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.

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			\$0
6.2.b.2 - Willfulness and/or negligence	20		\$1,667
6.2.b.3 - Cooperation with the Secretary		10	(\$834)
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)			\$0
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
Penalty Adjustments			\$863
Penalty =			\$9,198

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:	



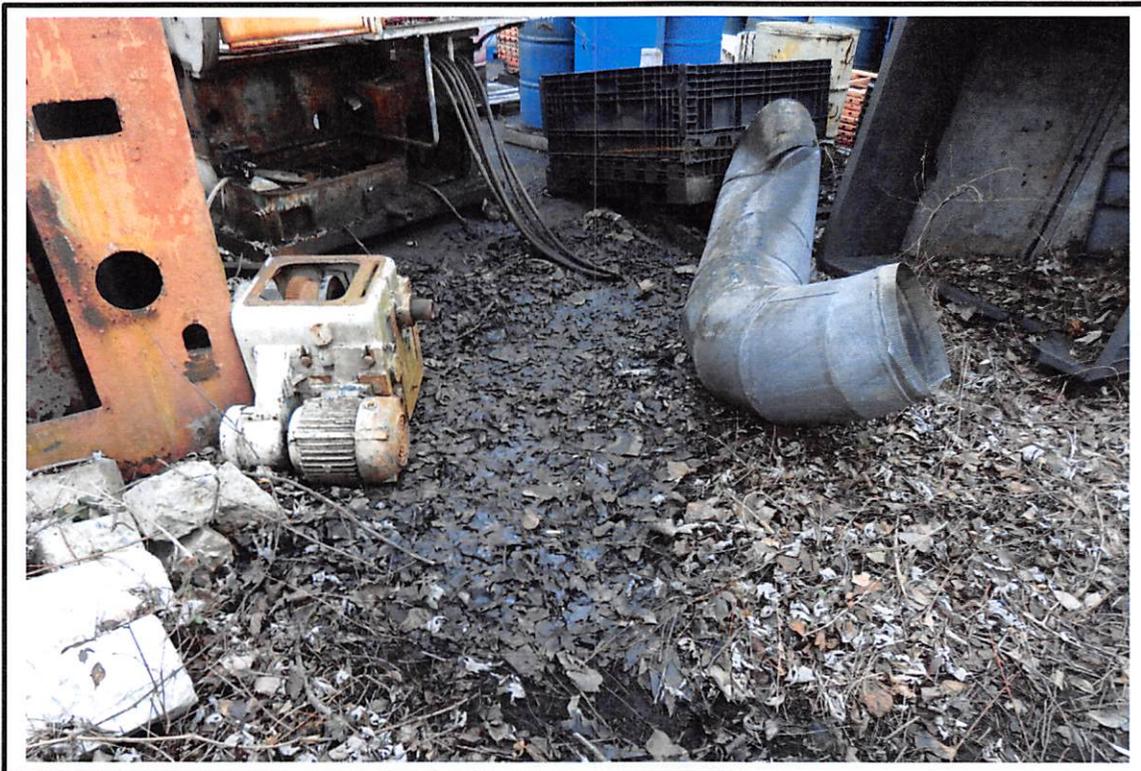
1/2/2014 – 55 gallon drums containing used oil and oily water, many of which were in poor condition.



1/2/2014 – Used oil overflowing from an open 55 gallon drum.



1/2/2014 – A steel 55 gallon drum in poor condition due to severe rusting.



1/2/2014 – Used oil leaking from drums and old equipment behind the facility.



1/2/2014 – Used oil contaminated soil.



1/2/2014 – Used oil flowing down the parking lot into the adjacent soil.



1/2/2014 – A ditch containing oily water that leads from the facility to a creek.



1/2/2014 – A close up of the material that was being released from the side of the facility.