



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

TO: Power Parts Supply
Mr. Justin Tallarico, Owner
353 Keystone Drive
Charleston, WV 25311

DATE: February 5, 2016

ORDER NO.: MM-16-10

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 Power Parts Supply (hereinafter "PPS").

FINDINGS OF FACT

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

1. PPS operates an equipment supply company located in Charleston, Kanawha County, West Virginia and is not currently notified as a handler of hazardous waste.
2. On September 17, 2015, 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, WV State Code and WV Legislative Rules were observed and documented:
 - a. 40CFR263.11(a) – PPS failed to obtain an EPA ID number prior to transporting hazardous waste. Specifically, PPS was hired by Mountaineer Gas Company to

Promoting a healthy environment.

remove a tank from the out of service Milton 2-Mile compressor station. The transported tank contained Mercaptan, a hazardous waste.

- b. 22-18-8 (a) – PPS disposed of hazardous waste without obtaining a permit. Specifically, PPS burned the aforementioned Mercaptan to empty the tank.
- c. 47CSR58 Section 7.1 - PPS deliberately allowed a chemical mixture to flow onto or under the land surface in such a manner that could impact groundwater quality. Specifically, the aforementioned tank failed and released burning Mercaptan to the land surface.

As a result of the aforementioned violations, Notice of Violation (NOV) No. 1509-250 was issued to PPS.

3. On January 19, 2016, WVDEP personnel and PPS met to discuss the terms and conditions of the Order.

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. PPS shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, PPS shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when PPS will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to Order No. MM-16-10. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
Environmental Enforcement - Hazardous Waste
601 57th Street SE
Charleston, WV 25304**

A copy of this plan shall 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.

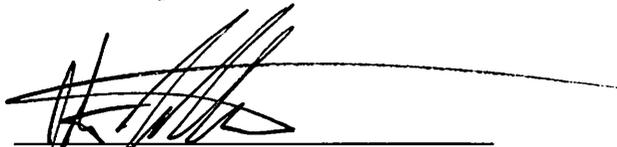
3. Because of PPS' Code of Federal Regulations and WV State Code violations, PPS shall be assessed a civil administrative penalty of seven thousand two hundred thirty-four dollars (\$7,234) to be paid to the West Virginia Department of Environmental Protection for deposit in the Hazardous Waste Management 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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

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



 Mr. Justin Tallarico, ~~Senior~~ VP Operations
 Power Parts Supply

15 July 2016

 Date

Public Notice begin:

 Date

Public Notice end:

 Date

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

 Date

revised June 2015

RECEIVED
 MAY 17 2016
 ENVIRONMENTAL
 ENFORCEMENT

Hazardous Waste Base Penalty Calculation

(pursuant to 33CSR27-6.1)

Responsible Party: Power Parts Supply **EPA ID Number:** Non-Notifier

Generator Classification:

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

1)	Potential for Harm Factor	Factor Range	FOF#											
			2a	2b										
a)	Harm to RCRA Program	1 to 3	3	3										
b)	Probability of Exposure	0 to 3	1	3										
c)	Potential Seriousness of Contamination	1 to 3	1	2										
Average Potential for Harm Factor			1.7	2.7	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	3										

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
2a	Minor	Major	\$2,335	1	\$2,335
2b	Moderate	Major	\$5,670	1	\$5,670
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					\$8,005

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	(\$801)
6.2.b.2 - Willfulness and/or negligence	10		\$801
6.2.b.3 - Cooperation with the Secretary		10	(\$801)
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			(\$771)
Penalty =			\$7,234

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:	

Photo Attachment



9/17/2015 – Remnants of Pallet Fire



9/17/2015 – Material From Tank That Was Burning.

Photo Attachment



9/17/2015 – Burning Mercaptan Tank.



9/17/2015 – Employee Extinguishing Fire.