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ENVIRONMENTAL
ENFORCEMENT

west virginia department of environmental protection

Division of Water and Waste Management
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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
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: Pompe Fence Manufacturing Inc./Freda Ricottilli
Attn: Freda Ricottilli
1141 Scenic Highway
Summersville, WV 26651

DATE: January 28, 2013

ORDER NO.: 7684

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 Pompe Fence Manufacturing Inc./Freda Ricottilli (hereinafter "Ricottilli").

FINDINGS OF FACT

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

1. Ricottilli operates a timber products facility located near Werth, Nicholas County, West Virginia. Ricottilli was reissued WV/NPDES Water Pollution Control Permit No. WV0111457, General Permit Registration Number WVG610572, on March 23, 2011.
2. On July 16, 2010, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of this facility. During the inspection, violations of the following sections of WV Legislative Rules and Ricottilli's permit were observed and documented:
 - a. Appendix A.I.13. - The Permittee failed to post outlet markers at the permitted discharge points.

Promoting a healthy environment.

- b. Appendix A.II.1. - The Permittee conducted improper management of waste wood materials on site, resulting in the generation of leachate that may contaminate storm water.
- c. 47CSR58 Section 4.7.d. - Ricottilli failed to properly store waste oil at several locations on site.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W10-34-100616-10-JKL was issued to Ricottilli.

- 3. On October 20, 2010, WVDEP issued Order No. 7133 to Ricottilli in response to the aforementioned violations.
- 4. On May 22, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code, Legislative Rule, and Ricottilli Fence's permit were observed and documented:
 - a. 47CSR58 Section 4.7.d. - Ricottilli failed to properly store waste oil at several locations on site.
 - b. 47CSR58 Section 7.1.- Ricottilli allowed petroleum derived products to flow onto the land surface in a manner that could impact groundwater quality.
 - c. Appendix A.II.1. - The Permittee conducted improper management of waste wood materials on site, resulting in the generation of leachate that may contaminate storm water.
 - d. Appendix A.I.13. - The Permittee failed to post outlet markers at permitted discharge points.
 - e. Appendix A.III. - The Permittee failed to submit Discharge Monitoring Reports (DMRs) for the first half of 2010 and 2011.
 - f. 22-11-15 - With the exception of submitting an administratively complete WV/NPDES permit application, Ricottilli failed to comply with any requirements of Order No. 7133.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. I12-34-033-JHH, I12-34-034-JHH, I12-34-036-JHH, and I12-34-035-JHH were issued to Ricottilli.

- 5. On December 21, 2012 Pompi Fence Manufacturing Inc. was revoked as a business by the West Virginia Secretary of State
- 6. On January 4, 2013 a meeting was held between WVDEP and a representative of Ricottilli 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. 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. Ricottilli shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, Ricottilli shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Ricottilli 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
SE Regional Environmental Enforcement Office
254 Industrial Drive
Oak Hill, WV 25901**

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 Ricottilli's West Virginia Code, Legislative Rule and permit violations, Ricottilli shall be assessed a civil administrative penalty of four thousand four hundred seventy dollars (\$4,470) 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. Ricottilli hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia. Under this Order, Ricottilli 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, Ricottilli 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 Ricottilli 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, Ricottilli 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 Ricottilli 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 Ricottilli 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 Ricottilli (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 Ricottilli 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 Ricottilli 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 Ricottilli, its successors and assigns.
7. This Order shall terminate upon Ricottilli's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Freda Ricottilli

6-29-13

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	5		\$185
6.2.b.4 - Compliance/noncompliance history	25		\$925
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			\$0
6.2.b.3 - Cooperation with the Secretary		10	(\$370)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$770
Penalty =			\$4,470

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:	

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 Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Fiori Ricottilli Fence

Receiving Stream:

UT of McMillion Creek

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#													
			4c	4d	4e	4f										
a)	Amount of Pollutant Released	1 to 3	1	1	1	1										
b)	Toxicity of Pollutant	0 to 3	1	0	0	1										
c)	Sensitivity of the Environment	0 to 3	1	0	0	1										
d)	Length of Time	1 to 3	1	1	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	0	0	1										
Average Potential for Harm Factor			1	0.4	0.4	1	No									
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	1	1	1	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.



**Notable quantities of waste tires and other miscellaneous solid waste being stored on site.
Open burning of solid waste being conducted onsite.**





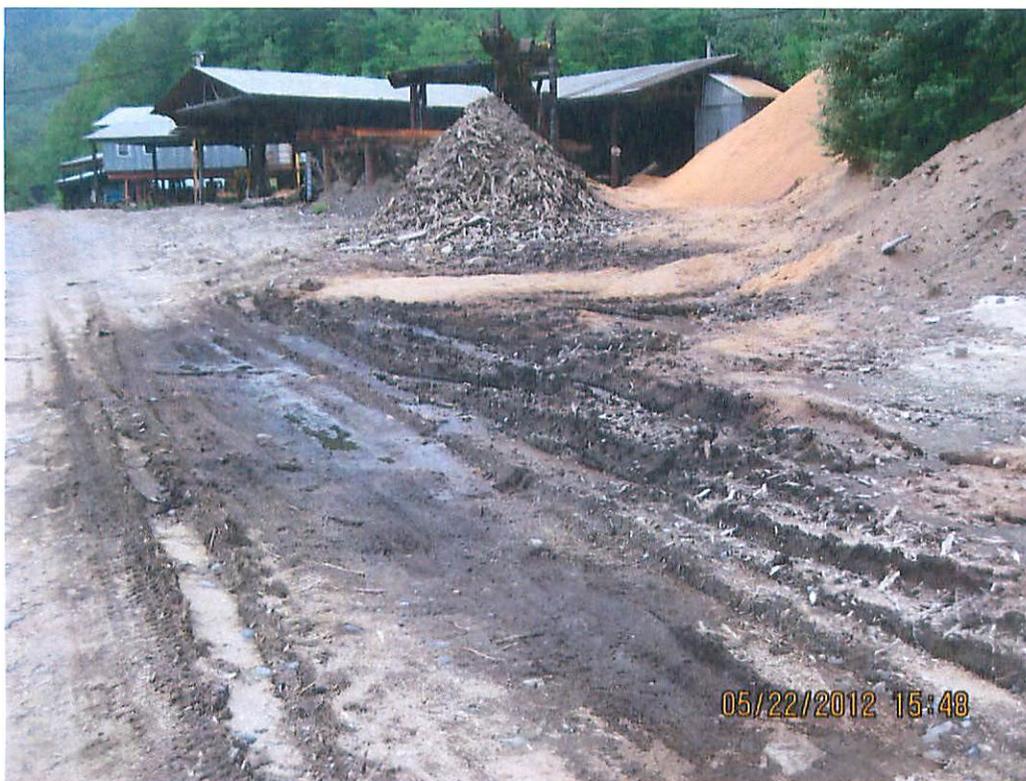
Several chemical containers being stored without secondary containment in different locations throughout site. Secondary containment leaking at fueling area.





Evidence of leachate from woodwaste piles flowing to receiving stream.





Evidence of leachate from woodwaste piles flowing to receiving stream.





Large quantities of wood waste being improperly stored onsite.

