



west virginia department of environmental protection

Division of Water and Waste Management
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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: Summit Point Automotive Research Center LLC DATE: June 13, 2014
Barbara Scott, Owner/President
PO Box 190 ORDER NO.: 8056
Summit Point, WV 25446

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 Barbara Scott (hereinafter "Scott").

FINDINGS OF FACT

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

1. Summit Point Automotive Research Center LLC operates a vehicle washing facility located near Summit Point, Jefferson County, West Virginia. Scott, the Owner and President of Summit Point Automotive Research Center LLC, was issued WV/NPDES Water Pollution Control Permit No. WV0078743, Registration No. WVG990231, on July 27, 2012.
2. On October 17, 2013, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV Legislative Rule and Scott's WV/NPDES permit were observed and documented:

Promoting a healthy environment.

- a. Section A.1 and Appendix A.III.2 – Scott failed to submit its annual discharge monitoring reports (DMRs).
- b. Section B.11 – Scott failed to submit its annual maintenance record.
- c. Section B.10.D – Scott failed to install a carbon filtering system.
- d. Section B.5 and 47CSR58 Section 7.1 – Scott failed to properly dispose of sludge in such a manner to prevent pollution to waters of the State. Specifically, Scott allowed a chemical mixture to flow onto or under the land surface in such a manner that could impact groundwater quality by land applying material removed from the treatment unit of a stormwater pond.

As a result of the aforementioned violations, Notice of Violation (NOV) No. i13-19-129-203 was issued to Scott.

3. On April 24, 2014, WVDEP personnel and representatives of Barbara Scott met to discuss the terms and conditions of this Order.
4. On June 11, 2014, WVDEP personnel conducted a review of facility records and determined that the aforementioned 2013 annual maintenance record and DMRs had been submitted. In addition, the proposed Plan of Corrective Action and schedule, dated May 29, 2014, was approved by WVDEP personnel. The Plan of Corrective Action and schedule has been incorporated into and become part of this Order. Failure to adhere to the approved Plan of Corrective Action and schedule is a violation 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. Scott shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. At least seven (7) days prior to beginning any surveys and/or remediation processes, Scott shall provide notification to WVDEP personnel. WVDEP Romney Office shall be contacted at (304) 822-7266.
3. Within seven (7) days of completion of remediation, Scott shall submit a written report that includes, but is not limited to, all sample data and proof of proper disposal of contaminated soil, in the form of receipts. The report shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NE Regional Environmental Enforcement Office
22288 Northwestern Pike
Romney, WV 26757**

A copy of this report shall be submitted to:

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

4. Because of Scott's permit violations, Scott shall be assessed a civil administrative penalty of ten thousand six hundred dollars (\$10,600) 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 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. Scott 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, Scott 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, Scott 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 Scott 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, Scott 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 Scott becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Scott 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 Scott 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 Scott (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 Scott 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 Scott 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 Scott, its successors and assigns.
7. This Order shall terminate upon Scott's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Barbara L Scott

Barbara Scott, Owner/President
Summit Point Automotive Research Center LLC

June 23, 2014

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

RECEIVED

JUN 26 2014

ENVIRONMENTAL
ENFORCEMENT

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: SPARC 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#													
			2.a	2.b	2.c	2.d										
a)	Amount of Pollutant Released	1 to 3	1	1	1	2										
b)	Toxicity of Pollutant	0 to 3	0	0	1	1										
c)	Sensitivity of the Environment	0 to 3	0	0	1	1										
d)	Length of Time	1 to 3	1	1	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	0	0	1	1										
Average Potential for Harm Factor			0.4	0.4	1	1.2	No									
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	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 -	10		\$960
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,000		\$1,000
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)			\$0
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	(\$960)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$1,000
Penalty =			\$10,600

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	\$1,000
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$1,000
Comments:	\$1,000 competitive advantage for avoided costs to properly dispose of the petroleum based waste.