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
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CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11

TO: South Berkeley Wrecker & Hauling
Mr. Jay Gall
250 Kelly Island Road
Martinsburg, WV 25401

DATE: September 5, 2012

ORDER NO.: 7489

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 South Berkeley Wrecker & Hauling (hereinafter "South Berkeley").

FINDINGS OF FACT

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

1. South Berkeley operates a trucking and wrecker service located at 250 Kelly Island Road, Martinsburg, Berkeley County, West Virginia. South Berkeley was issued WV/NPDES Water Pollution Control Permit No. WV0111457 with registration number WVG611434 on October 22, 2009.

2. On October 2, 2009, the West Virginia Department of Environmental Protection (hereinafter, "WVDEP") personnel conducted an inspection at South Berkeley. During the inspection, the following violations were observed and documented:

    a. Several areas around the property exhibited black stains on the gravel and soil produced from over-filling trucks with diesel, tank leaking, and diesel pipeline leaking. South Berkeley failed to remediate and report the spills to the Office of Water Resources Emergency Notification Number. This is a violation of WV Legislative Rule 47CSR58 Section 7.

b. A pipe was observed protruding from the side of a bank on the south side of the property at the chain link fence. The water near the pipe was dark grayish-black in color. The pipe is connected to the septic tank and the storm water inlets. Inside of the building, the employees were observed draining oil onto the floor near a drain that is connected to the septic tank. This is a violation of WV Legislative Rule 47CSR58 Section 7.
c. Around the building, drums and tanks of used oil and other vehicle fluids without secondary containment were observed. This is a violation of WV Legislative Rule 47CSR58 Section 4.7.

3. On June 21, 2011, WVDEP personnel conducted an inspection at South Berkeley. During the inspection, the following violations were observed and documented:

   a. The permittee failed to provide groundwater and stormwater pollution prevention training to its employees as required by WV/NPDES Permit Section B.17.A.a.2.h. Notice of Violation (NOV) w11-02-071-203 was issued.
   b. The permittee failed to perform stormwater inspections as required by WV/NPDES Permit Section B.17.A.a.2.k.b. NOV w11-02-071-203 was issued.
   c. The permittee failed to perform water sampling as required by WV/NPDES Permit Section A, Sector I. NOV w11-02-071-203 was issued.
   d. The permittee allowed an open dump to exist on its property. This is a violation of WV/NPDES Permit Section B.17.A.a.2.D. NOV w11-02-071-203 was issued.
   e. Around the building, drums and tanks of used oil and other vehicle fluids without secondary containment were observed. This is a violation of WV/NPDES Permit Appendix A, Section II-1. NOV w11-02-071-203 was issued.
   f. Several areas around the property exhibited black stains on the gravel and soil produced from over filling trucks with diesel, tank leaking, and diesel pipeline leaking. South Berkeley failed to remediate and report the spills to the Office of Water Resources Emergency Notification Number. This is a violation of WV/NPDES Permit Appendix A-3. NOV w11-02-070-203 was issued.

4. On August 28, 2012, WVDEP personnel and a representative of South Berkeley 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. South Berkeley shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.

2. Within thirty (30) days of entry of this Order, South Berkeley shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when South Berkeley will achieve compliance with all terms and conditions of its WV/NPDES permit. The plan of corrective action shall be submitted to:

WVDEP Environmental Inspector Supervisor
NE Regional Environmental Enforcement Office
HC63 Box 2545
Romney, WV 26757

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 South Berkeley's permit violations, South Berkeley shall be assessed a civil administrative penalty of four thousand five hundred ninety dollars ($4,590) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund in accordance with the following schedule:

   Payment 1 in the amount of $1,530 due on or before November 1, 2012.
   Payment 2 in the amount of $1,530 due on or before December 1, 2012.
   Payment 3 in the amount of $1,530 due on or before January 1, 2013.

   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. South Berkeley 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, South Berkeley 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, South Berkeley 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 South Berkeley 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, South Berkeley 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 South Berkeley 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 South Berkeley 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 South Berkeley (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 South Berkeley 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 South Berkeley 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 South Berkeley, its successors and assigns.

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

Jay Gall
South Berkeley Wrecker & Hauling

9-10-12
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

revised January 2011