



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**

TO: Swift Transportation, Inc.
Mr. Dan Coberly, Haz-Mat Dept.
2200 South 75th Avenue
Phoenix, AZ 85043
and
Jerry Worsham
201 North Central Ave.
Suite 3300
Phoenix, AZ 85004

DATE: April 2, 2012

ORDER NO.: 7522

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 Swift Transportation, Inc. (hereinafter "Swift").

FINDINGS OF FACT

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

1. Swift operates a nationwide trucking company with corporate headquarters in Phoenix, Arizona.
2. On approximately February 6, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel were notified by a third party of a spill. A representative of Swift, witnesses of the accident, and the tow truck driver alleged that, on January 6, 2011, a Swift truck drove onto Wolf Run Road (County Route 31), an unmarked road at Mackeysville, in Tucker County, West Virginia. The truck ran off the road, through a

fenced yard, and down a hill, where it hit a pick-up truck and came to rest against a pine tree.

3. On February 15, 2011, in response to the third party notification, WVDEP personnel visited the spill site, nearly two (2) miles from US Rt. 219. As a result of this visit, WVDEP personnel observed and documented the following:
 - a. Soil staining and a prevalent fuel odor in the yard and driveway were present.
 - b. The yard was wet from a ruptured water line.
 - c. Oil, fuel, and antifreeze from both vehicles spilled onto the ground approximately twenty (20) feet uphill from a home. The spill was not reported to WVDEP, a violation of West Virginia Legislative Rule 47CSR11 Section 2.2.a.
 - d. No remediation of the site occurred, a violation of West Virginia Legislative Rule 47CSR11 Section 2.5.a.

As a result of the aforementioned violations, Notice of Violations (NOVs) No. NOV W-11-47-05-202 and NOV W-11-47-06-202 were issued to Swift.

4. On February 16, 2011, WVDEP personnel spoke to Dan Coberly, a representative of Swift, about the spill and the need to phone the WVDEP Spill Line. He was given the Spill Line Toll-Free number. WVDEP personnel then spoke to Ed Ballash, a representative of the environmental firm ERTS, about reporting spills and remediating the site. He stated that GEC would be the environmental firm responsible for site remediation.
5. On February 24, 2011, the spill was reported by Swift's attorney to the WVDEP Spill Line.
6. On February 28, 2011, WVDEP, GEC, and Jerry Warshun (Swift's Attorney) discussed the type and extent of the material spilled and possible remediation requirements (including bioremediation under the home).
7. On March 9, 2011, WVDEP personnel conducted a follow-up inspection, and observed and documented the following:
 - a. Swift caused conditions not allowable in State waters by creating oily slicks, due to accumulation, by water flowing through the spill site, of various hydrocarbons from vehicles involved in the January 6, 2011 accident, a violation of West Virginia Legislative Rule 47CSR2 Section 3.2.a.

As a result of the aforementioned violations, NOV No. W-11-47-12-202 was issued to Swift.

8. On April 28, 2011, WVDEP personnel conducted an additional follow-up inspection, and observed and documented the following:
 - a. Swift caused conditions not allowable in State waters by creating oily slicks, due to accumulation, by water flowing through the spill site, of various hydrocarbons from vehicles involved in the January 6, 2011 accident, a violation of West Virginia Legislative Rule 47CSR2 Section 3.2.a.

- b. No remediation of the spill site had occurred. Failure to remediate the spill site is a violation of West Virginia Legislative Rule 47CSR11 Section 2.5.a.

As a result of the aforementioned violations, NOV's No. W-11-47-17-202 and W-11-47-18-202 were issued to Swift.

9. On June 21, 2011, Potesta and Associates and Miller Environmental began remediating the site. According to Potesta and Associates and Miller Environmental, remediation of the site was completed on July 8, 2011.
10. On July 14, 2011, Swift requested a "no further action" letter from WVDEP. The requested letter was issued by WVDEP the following week.
11. On March 14, 2012 a meeting by telephone was held between WVDEP and Swift to discuss the terms 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. Because of Swift's West Virginia Legislative Rule violations, Swift shall be assessed a civil administrative penalty of fifteen thousand five hundred dollars (\$15,500) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry 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. Swift 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, Swift 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, Swift 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 Swift 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, Swift 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 Swift 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 Swift 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 Swift (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 Swift 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 Swift 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 Swift, its successors and assigns.
7. This Order shall terminate upon Swift's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Dan Coberly
Swift Transportation, Inc.

04-09-2012

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date



Figure 1 fuel/oil spill in yard near pine trees



Figure 2 debris left in yard



Figure 3 fuel/oil staining in yard

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Swift Transportation - Mackeysville spill Receiving Stream: Wolf Run of Blackfork

Treatment System Design Maximum Flow: N/A MGD

Treatment System Actual Average Flow: N/A MGD (if known)

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

1)	Potential for Harm Factor	Factor Range	FOF#													
			3c	3d	7a	8a	8b									
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1									
b)	Toxicity of Pollutant	0 to 3	0	1	1	1	1									
c)	Sensitivity of the Environment	0 to 3	0	1	1	1	1									
d)	Length of Time	1 to 3	1	1	1	1	2									
e)	Actual Exposure and Effects thereon	0 to 3	0	1	1	1	1									
Average Potential for Harm Factor			0.4	1	1	1	1.2	No								
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	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 -	20		\$2,380
6.2.b.4 - Compliance/noncompliance history	20		\$2,380
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	(\$1,190)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$3,600
Penalty =			\$15,500

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:	