



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
SOLID WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 15**

TO: United Disposal Service
William Hood, Owner
P.O. Box 487
Davis, WV 26260

DATE: August 26, 2015

ORDER NO.: MM-15-20

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 15, Section 1 et seq. to United Disposal Service (hereinafter "United Disposal").

FINDINGS OF FACT

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

1. United Disposal is a solid waste transporter located in, Keyser, Mineral County, West Virginia. On December 29, 2014, United Disposal was reissued No Exposure Certification No. WVRNE0074, in accordance with the provisions of WV/NPDES Water Pollution Control Permit No. WV0111457.
2. On January 23, 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 terms and conditions of United Disposal's No Exposure Certification, WV State Code, and WV Legislative Rules were observed and documented:
 - a. No Exposure Permit Certification, 22-11-8, and 47CSR10 Section 3.1 – United Disposal failed to submit an administratively complete application for

Promoting a healthy environment.

WV/NPDES permit coverage when its materials and activities became exposed to rain, snow, snow melt, and/or runoff. During the inspection, WVDEP personnel observed tires stored outside, trash in uncovered/unlined dumpsters, and petroleum spills on the ground. Some dumpsters were upset, and the exposed solid waste was scattered on the ground.

- b. 47CSR11 Section 2.2.a - United Disposal failed to immediately report a spill of petroleum products into waters of the State to the Office of Water Resources' Emergency Notification Number.
- c. 33CSR1 Section 7.1 and 22-15-10(a) – United Disposal created, contributed to, and/or allowed an open dump to exist on the property. Specifically, tires and other solid waste were scattered on the ground.
- d. 33CSR1 Section 3.5.a and 22-15-10(b) – United Disposal operated a solid waste facility without authorization pursuant to a valid solid waste facility permit. Specifically, United Disposal sorted, stored, and transferred solid waste at the aforementioned facility.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. SW-15-029-005-2161, SW-15-029-006-2161, and SW-15-029-007-2161 were issued to United Disposal.

3. On August 18, 2015, WVDEP personnel and a representative of United Disposal met to discuss the terms and conditions of this Order.
4. On August 18, 2015, United Disposal was issued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG611739, to cover regulated activities at the aforementioned site. The WV/NPDES permit superseded No Exposure Certification No. WVRNE0074.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq., and Chapter 22, Article 15, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. United Disposal shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, United Disposal shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when United Disposal will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0111457, Registration No. WVG611739 and Order No. MM-15-20. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NE Regional Environmental Enforcement Office
22288 Northwestern Pike
Romney, West Virginia 26757-8005**

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 United Disposal's WV Legislative Rule and WV State Code violations, United Disposal shall be assessed a civil administrative penalty of three thousand three hundred sixty dollars (\$3,360) 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:**

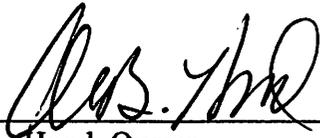
**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

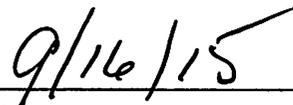
1. United Disposal hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21, and/or Chapter 22, Article 15, Section 16 of the Code of West Virginia. Under this Order, United Disposal agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, United Disposal 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 United Disposal 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, United Disposal 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 United Disposal becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and United Disposal 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 United Disposal 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 United Disposal (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 United Disposal 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 United Disposal 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 United Disposal, its successors and assigns.
7. This Order shall terminate upon United Disposal's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



William Hood, Owner
United Disposal Service



Date

Public Notice begin:

Date

Public Notice end:

Date

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

RECEIVED Date

SEP 21 2015

**ENVIRONMENTAL
ENFORCEMENT**

United Disposal. Photos taken by R.B. Mills at end of workday on January 23, 2015



Overall view of shop (excluding semi-trailers in background)



Overall view of dumpsters in shop yard (excluding semi-trailers in background)



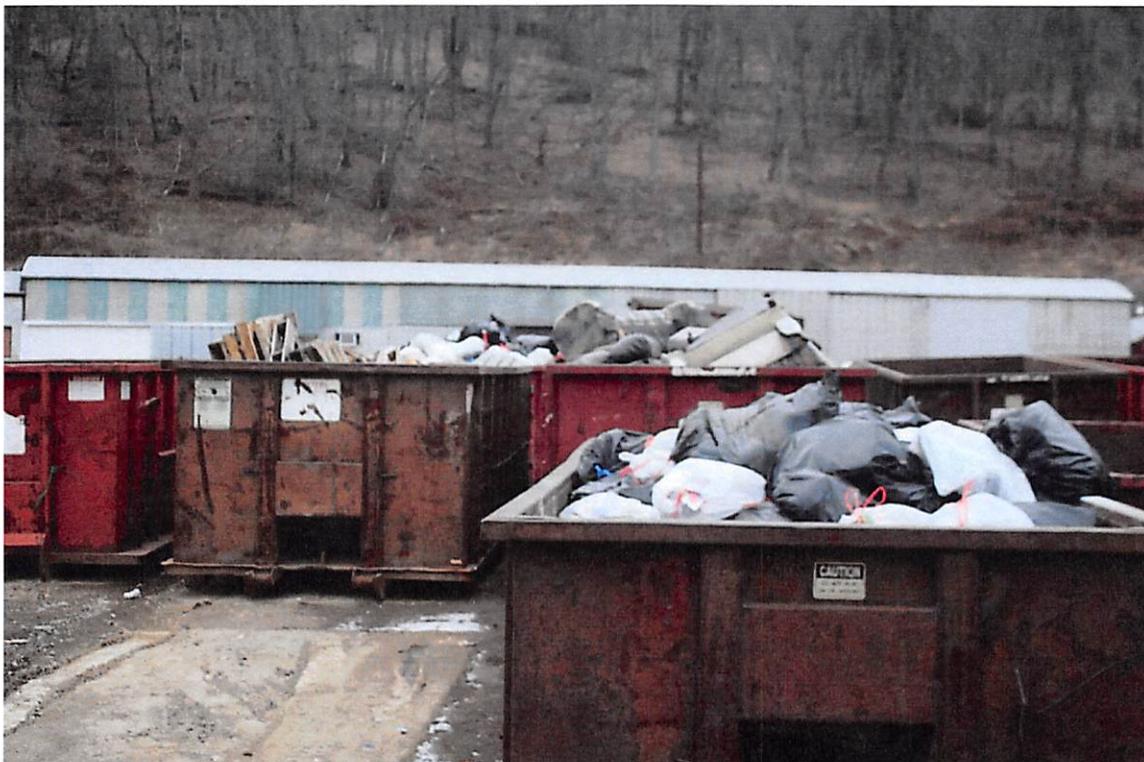
Dumpsters containing solid waste



Trucks at shop



Unlined, uncovered dumpsters



Unlined, uncovered dumpsters



Unlined, uncovered dumpster



Uncovered truck





Overtuned dumpster



Another overtuned dumpster



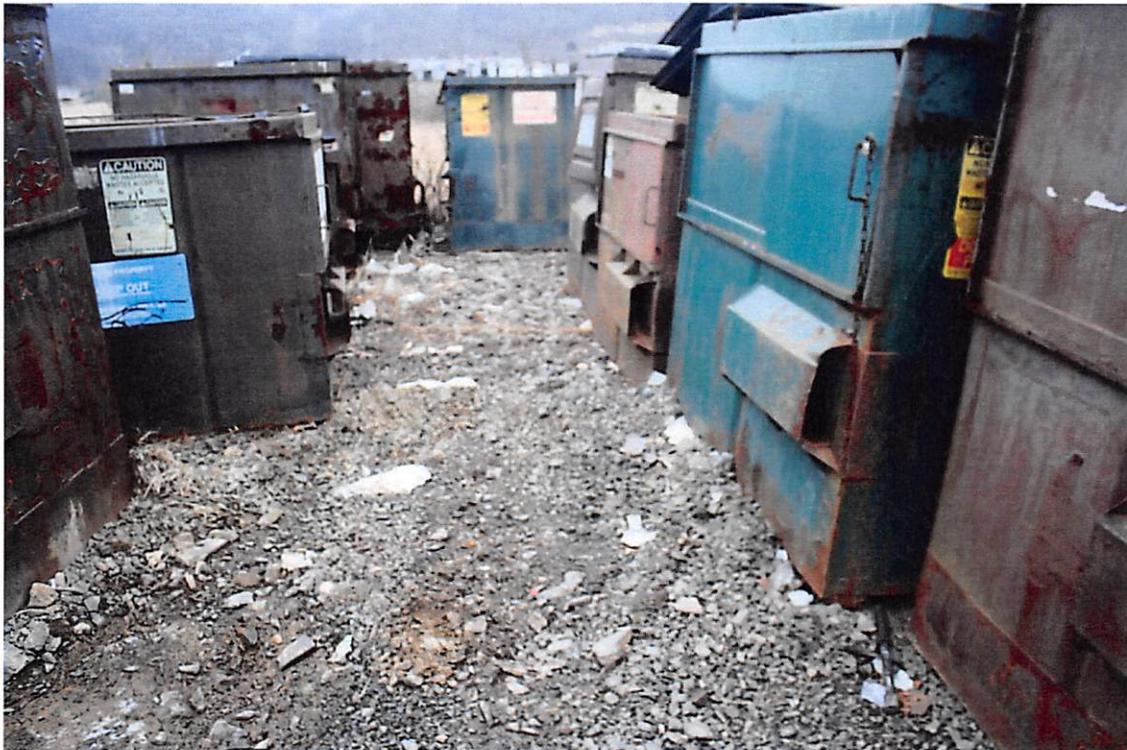
More overturned dumpsters and scattered trash



Scattered trash



Exposed dumpster



Exposed dumpsters and scattered trash



Leachate stains



Petroleum product spillage



Waste tires



Waste tires and scattered trash near trans-loading slide



Trans-loading slide and scattered trash





Scattered trash





Petroleum product spillage



Petroleum product spillage



Petroleum product spillage



Petroleum product spillage and leachate stains

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: United Disposal Service **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#											
			2a	2b										
a)	Amount of Pollutant Released	1 to 3	1	1										
b)	Toxicity of Pollutant	0 to 3	1	0										
c)	Sensitivity of the Environment	0 to 3	1	0										
d)	Length of Time	1 to 3	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	0										
Average Potential for Harm Factor			1	0.4	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 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		\$370
6.2.b.4 - Compliance/noncompliance history			\$0
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		10	(\$370)
6.2.b.3 - Cooperation with the Secretary		10	(\$370)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$340)
Penalty =			\$3,360

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:	