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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

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

TO: USA Parts Supply  
Mike Cannan  
261 Industrial Blvd  
Kearneysville, WV 25430

DATE: September 17, 2015

ORDER NO.: 8385

**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 USA Parts Supply (hereinafter “USA Parts”).

**FINDINGS OF FACT**

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

1. USA Parts operates a salvage yard located near Kearneysville, Jefferson County, West Virginia.
2. On February 19, 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 State Code and WV Legislative Rules were observed and documented:
  - a. 22-11-8 and 47CSR10 Section 3.1-USA Parts failed to obtain a WV/NPDES Multi-Sector General Water Pollution Control Permit to discharge into the waters of the State.

As a result of the aforementioned violations, a warning was issued to USA Parts.

3. On February 27, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and WV Legislative Rules were observed and documented:

Promoting a healthy environment.

- a. 22-11-8 and 47CSR10 Section 3.1-USA Parts failed to obtain a WV/NPDES Multi-Sector General Water Pollution Control Permit to discharge into the waters of the State.

As a result of the aforementioned violations, Notice of Violation (NOV) No. i15-02-024-203 was issued to USA Parts.

4. On March 12, 2015, WVDEP personnel received an email from Paul Raco, Consultant for USA Parts, requesting an extension of time to obtain engineers and submit the aforementioned WV/NPDES permit application.
5. On March 19, 2015, WVDEP personnel received an email from Paul Raco stating the electronic account for the aforementioned WV/NPDES permit application had already been created. However, WVDEP records did not indicate that an electronic account had been created for USA Parts.
6. On March 19, 2015, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code and WV Legislative Rules were observed and documented:
  - a. 22-11-8 and 47CSR10 Section 3.1-USA Parts failed to obtain a WV/NPDES Multi-Sector General Water Pollution Control Permit to discharge into waters of the State. Storm water leaves the site through a conveyance system at the rear of the building, along the fence.

As a result of the aforementioned violations, NOV No. i15-02-030-203 was issued to USA Parts.

7. On June 30, 2015, WVDEP personnel and representatives of USA Parts met to discuss the terms and conditions of this Order.
8. On July 10, 2015, WVDEP personnel received financial documents from USA Parts. The provided information was used to perform an economic analysis which evaluated USA Parts' ability to pay a civil administrative penalty.

### **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. USA Parts 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, USA Parts shall electronically submit an administratively complete application for WV/NPDES permit coverage for the regulated activity. Any questions regarding the application process shall be directed to WVDEP DWWM-Permitting Section at (304) 926-0495.

3. Because of USA Parts' West Virginia Code and Legislative Rule violations, USA Parts shall be assessed a civil administrative penalty of seven thousand four hundred dollars (\$7,400) 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 \$616.66 due on or before November 1, 2015.

Payment 2 in the amount of \$616.66 due on or before December 1, 2015.

Payment 3 in the amount of \$616.66 due on or before January 1, 2016.

Payment 4 in the amount of \$616.66 due on or before February 1, 2016.

Payment 5 in the amount of \$616.66 due on or before March 1, 2016.

Payment 6 in the amount of \$616.66 due on or before April 1, 2016.

Payment 7 in the amount of \$616.66 due on or before May 1, 2016.

Payment 8 in the amount of \$616.66 due on or before June 1, 2016.

Payment 9 in the amount of \$616.66 due on or before July 1, 2016.

Payment 10 in the amount of \$616.66 due on or before August 1, 2016.

Payment 11 in the amount of \$616.66 due on or before September 1, 2016.

Payment 12 in the amount of \$616.74 due on or before October 1, 2016.

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:**

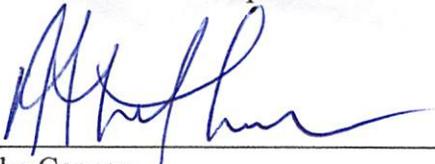
**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. USA Parts 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, USA Parts 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, USA Parts 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 USA Parts 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, USA Parts 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 USA Parts becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and USA Parts 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 USA Parts 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 USA Parts (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 USA Parts 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 USA Parts 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 USA Parts, its successors and assigns.
7. This Order shall terminate upon USA Parts' notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Mike Cannan  
USA Parts Supply

10/19/15

Date

Public Notice begin:

Date

Public Notice end:

Date

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

**RECEIVED**  
Date

OCT 22 2015

ENVIRONMENTAL  
ENFORCEMENT





## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: USA Parts 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#											
			3a	6a										
a)	Amount of Pollutant Released	1 to 3	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1										
d)	Length of Time	1 to 3	1	2										
e)	Actual Exposure and Effects thereon	0 to 3	1	1										
<b>Average Potential for Harm Factor</b>			1	1.2	No									
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>												
	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 -	30		\$1,860
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$1,170		\$1,170
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	(\$620)
6.2.b.5 - Ability to Pay		20	(\$1,240)
<b>Penalty Adjustments</b>			<b>\$1,200</b>
<b>Penalty =</b>			<b>\$7,400</b>

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	\$1,170
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$1,170</b>
<b>Comments:</b> Avoided cost of WV/NPDES permit application fee.	