



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

TO: CMC Company LLC
Att: David Biafora
6200 Mid Atlantic Dr.
Morgantown WV 26508

DATE: December 6, 2011

ORDER NO.: 7447

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 CMC Company LLC (hereinafter "CMC").

FINDINGS OF FACT

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

1. CMC operates a construction site with land disturbance commonly known as the Village at West Run located on West Run Road, Monongalia County, West Virginia. CMC was issued WV/NPDES General Water Pollution Control Permit for Stormwater Associated with Construction Activities (WV0115924), General Permit Registration No. WVR103128 on September 6, 2007 with an expiration date of December 4, 2012. This permit is for 21.4 acres of disturbance.
2. On December 15, 2008, WVDEP personnel conducted an inspection of the Village at West Run construction site. During the inspection, the following violations of the terms and conditions of CMC's permit were observed and documented. Notice of Violation No. SW-NW-BML-121508-002 was issued.
 - a. Permittee failed to establish a stable construction entrance as detailed in the S. and E. plans to reduce the tracking of sediment onto public or private roads. (Section G.4.e.1.E.)

Promoting a healthy environment.

3. On July 6, 2011, WVDEP personnel conducted an inspection of the Village at West Run construction site. During the inspection the following violations of the terms and conditions of CMC's permit were observed and documented. Notice of Violation No. I11-31-052-JHH was issued.
 - a. Permittee allowed sediment-laden water to leave the site without going through an appropriate device. (Section G.4.e.2.A.ii.j.)
 - b. Permittee failed to comply with the General Permit and approved Storm Water Pollution Prevention Plan (SWPPP). Several erosion control devices were not in place as detailed by the SWPPP. (Section B.)
 - c. Permittee failed to modify SWPPP when there was a change in design, construction, scope of operation, or maintenance, which had a significant effect on the potential for the discharge of pollutants into the waters of the state. (Section G.4.c.)
 - d. Permittee failed to stabilize all temporary diversions prior to becoming functional. (Section G.4.e.2.A.i.d.)
 - e. Permittee failed to temporary seed and mulch all areas where construction activities have ceased for more than seven (7) days. (Section G.4.e.2.A.i.)
 - f. Permittee failed to operate and maintain all erosion control devices. (Section D.1.)
4. On July 21, 2011 WVDEP personnel conducted an inspection of the Village at West Run construction site. During the inspection the following violation of WV Legislative Rule was observed and documented. Notice of Violation No. NW-CJJ-07212011-001 was issued.
 - a. Permittee caused conditions not allowable in waters of the state by creating distinctly visible settleable solids in the unnamed tributary of West Run at sediment pond #2 and creating a visible plume of sediment laden water in West Run at discharge of sediment pond #3. (47CSR2 Section 3.2.a.)
5. On October 21, 2011, WVDEP personnel and a representative of CMC 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. CMC shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and all pertinent laws and rules.
2. Because of CMC's Legislative Rule and permit violations, CMC shall be assessed a civil administrative penalty of twelve thousand one hundred ten dollars (\$12,110) 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. CMC 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, CMC 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, CMC 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 CMC 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, CMC 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 CMC 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 CMC 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 CMC (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 CMC 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 CMC 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 CMC, its successors and assigns.
7. This Order shall terminate upon CMC's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

David Biafora
CMC Company LLC

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date