west virginia department of environmental protection

Environmental Enforcement
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0470 Fax: (304) 926-0488

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

January 6, 2012

Arrow, WV
John D. Furst
PO Box 472
Mt. Hope, WV 25880

CERTIFIED RETURN RECEIPT REQUESTED
91 7199 9991 7030 8755 8777
RE: Violation of Chapter 22, Article 11 of the WV State Code

Dear Mr. Furst:

Enclosed is revised CONSENT ORDER NUMBER 7475 dated January 6, 2012. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to John D. Furst violating Chapter 22, Article 11 of the WV State Code at its facility located in Glen Jean, Fayette County, West Virginia. This revision is based upon your recent meeting with David C. Simmons, Enforcement Hearing Officer. This administrative settlement is being offered on behalf of the director of the Division of Water and Waste Management.

Please review, sign and return the original copy of the revised ORDER to me within five (5) working days of receipt. Subsequently, WVDEP will initiate the public notice process.

Sincerely,

Michael A. Zeto
Chief Inspector

Enclosure
cc: Scott G. Mandirola, Director, DWWM (via e-mail)
Yogesh Patel, Asst. Director, DWWM/Permits
Joseph M. Hickman, Assistant Chief Inspector, EE/WW (via e-mail)
Jeremy Bandy, Assistant Chief Inspector, EE (via e-mail)
David C. Simmons, Enforcement Hearing Officer, EE (via e-mail)
Laura McGee, Environmental Resources Specialist, EE (via e-mail)
John Hendley, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)

revised September 2011

west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
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CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11

TO: Arrow, WV
John D. Furst
PO Box 472
Mt. Hope, WV 25880

DATE: January 6, 2012

ORDER NO.: 7475

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 John D. Furst.

FINDINGS OF FACT

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

1. John D. Furst operates a construction project with land disturbance located near Glen Jean, Fayette County, West Virginia. John D. Furst was issued WV/NPDES General Water Pollution Control Permit for Stormwater Associated with Construction Activities (WV0115924) General Permit Registration No. WVR104859 on June 17, 2010, with an expiration date of December 4, 2012. This permit is for 649.65 acres of disturbance. Kanawha Stone has been contracted by John D. Furst to operate the aforementioned construction project.

2. Dunloup Creek (downstream of Harvey Sewage Treatment Plant) is listed as Category B-2 Trout Waters in Appendix A of 47CSR2 Section 6.3.b. The New River is designated as Tier 3 Waters in 47CSR2A 4.1.a. and/or 4.3.a.

3. On May 27 and June 7, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the construction project. During the inspection, it was determined that John D. Furst caused the following violations of

WV/NPDES General Water Pollution Control Permit No. WV0115924 and WV Legislative Rule:

a. Failure to seed and stabilize all temporary diversions immediately and prior to becoming functional (Section G.4.e.2.A.i.d.).
b. Failure 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.).
c. Creating conditions not allowable in waters of the State by allowing sediment deposits into a wetland (47CSR2 Section 3.2.b).

As a result of the aforementioned violations NOVs 111-10-043-JHH and 111-10-044-JHH were issued.

4. On June 22, 2011, WVDEP personnel conducted an inspection of the project. During the inspection, it was determined that John D. Furst caused the following violations of WV/NPDES General Water Pollution Control Permit No. WV0115924 and WV Legislative Rule:

a. Creating conditions not allowable in waters of the State by allowing sediment deposits into Turley Creek and an unnamed tributary thereof (47CSR2 Section 3.2.b).
b. Failure to prevent sediment-laden water from leaving the site without going through an appropriate device (Section G.4.e.2.A.ii.j.).

As a result of the aforementioned violations NOVs 111-10-045-JHH and 111-10-046-JHH were issued.

5. On August 22, 2011, WVDEP personnel conducted an inspection of the project. During the inspection, it was determined that John D. Furst caused the following violations of WV/NPDES General Water Pollution Control Permit No. WV0115924 and WV Legislative Rule:

a. Failure to prevent sediment-laden water from leaving the site without going through an appropriate device (Section G.4.e.2.A.ii.j.).
b. Failure to seed and stabilize all temporary diversions immediately and prior to becoming functional (Section G.4.e.2.A.i.d.).
c. Failure 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.).
d. Failure to operate and maintain all sediment and erosion control devices (Section D.1.).
e. Failure to provide inlet and outlet protection for sediment control structures (Section G.4.e.2.A.ii.c.).
f. Failure to reseed areas that failed to germinate within 30 days after seeding (Section G.4.e.2.A.i.c.).
g. Creating conditions not allowable in waters of the State by allowing sediment deposits into Turley Creek (47CSR2 Section 3.2.b).
h. Creating conditions not allowable in waters of the State by allowing distinctly visible settleable solids in Turley Creek, Barren Branch, Dunloup Creek and the New River

(47CSR2 Section 3.2.a.). The plume of muddy water was observed for a total of approximately 5 miles.

As a result of the aforementioned violations NOVs 111-10-056-JHH, 111-10-057-JHH, and 111-10-058-JHH were issued.

6. On December 7, 2011, WVDEP personnel and representatives of Kanawha Stone 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. John D. Furst shall immediately take all measures to initiate compliance with all terms and conditions of the WV/NPDES permit and pertinent laws and/or rules.

2. Within twenty (20) days of entry of this Order, John D. Furst shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when John D. Furst will achieve compliance with all pertinent laws and rules. The plan of corrective action shall be submitted to:

WVDEP Environmental Inspector Supervisor
SE Regional Environmental Enforcement Office
254 Industrial Drive
Oak Hill, WV 25901

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 John D. Furst's Legislative Rule and permit violations, John D. Furst shall be assessed a civil administrative penalty of thirty-six thousand one hundred eighty dollars ($36,180) 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. John D. Furst 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, John D. Furst 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, John D. Furst 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 John D. Furst 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, John D. Furst 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 John D. Furst 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 John D. Furst 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 John D. Furst (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 John D. Furst 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 John D. Furst 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 John D. Furst, its successors and assigns.

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

John D. Furst
Arrow, WV

2-29-12
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date

revised January 2011

RECEIVED
MAR - 5 2012
ENVIRONMENTAL
ENFORCEMENT