



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: Gary Christian
Double C Enterprises, LLC
427 Enterprises, PO Box 39
Kenna, WV 25248

DATE: May 21, 2012

ORDER NO.: 7600

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 Double C Enterprises, LLC (hereinafter "Double C").

FINDINGS OF FACT

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

1. Double C operates a construction operation with land disturbance located in Kenna, Jackson County, West Virginia. Double C was issued WV/NPDES General Water Pollution Control Permit No. WV0115924, General Permit Registration No. WVR101405, on January 28, 2005. Said registration expired on December 1, 2008.
2. Establishments with discharges composed entirely of stormwater associated with construction activities disturbing more than one (1) acre must obtain a WV/NPDES permit from the West Virginia Department of Environmental Protection (WVDEP) pursuant to WV State Code 22-11-8 and as described in WV Legislative Rule 47CSR10.
3. WVDEP advised Double C in mid-2007, mid 2008, and April 2011 to reapply for permit coverage under the WV/NPDES General Water Pollution Control Permit for Storm Water Associated with Construction Activity.
4. Double C failed to reapply for permit coverage under the aforementioned WV/NPDES General Water Pollution Control Permit, a violation of WV Legislative Rule 47CSR10 Section 5.2.

5. On March 7, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, it was observed that all areas disturbed during construction were not adequately stabilized to allow WV/NPDES permit termination.

As a result of the aforementioned violation, Notice of Violation (NOV) No. I12-18-001-JCC was issued to Double C.

6. On May 15, 2012, WVDEP personnel and a representative of Double C 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. Double C shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within forty-five (45) days of the effective date of this Order, Double C shall submit an administratively complete application for WV/NPDES permit coverage for the regulated activity. This application shall be submitted to:

**WVDEP DWWM-Permitting Section
Attn: Construction Stormwater Team
601 57th Street SE
Charleston, WV 25304**

3. Because of Double C's WV Legislative Rule violations, Double C shall be assessed a civil administrative penalty of five thousand three hundred ten dollars (\$5,310) 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 \$1,770 due on or before July 1, 2012.
Payment 2 in the amount of \$1,770 due on or before August 1, 2012.
Payment 3 in the amount of \$1,770 due on or before September 1, 2012.

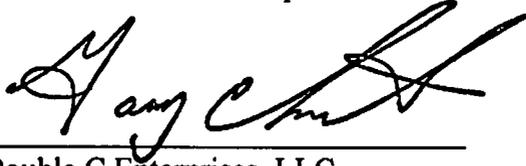
Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

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

OTHER PROVISIONS

1. Double C 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, Double C 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, Double C 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 Double C 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, Double C 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 Double C 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 Double C 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 Double C (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 Double C 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 Double C 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 Double C, its successors and assigns.

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



Double C Enterprises, LLC
Gary Christian

6-12-12
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised September 2011

RECEIVED

JUN 14 2012

ENVIRONMENTAL
ENFORCEMENT

11/10/2010 10:10:10 AM

21:11:11

[Handwritten signature]



JUN 14 2010

ENVIRONMENTAL
ENFORCEMENT



- Slips on the front slope need to be repaired and the areas stabilized.



- Erosion and slips on the front slopes needs repaired and the areas stabilized.



- Slips on the front slope need to be repaired and the areas stabilized.



- Slips on the front slope need to be repaired and the areas stabilized.



- Slips on the front slope need to be repaired and the areas stabilized.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Double C Enterprises LLC

Receiving Stream:

Dudden Fork

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#											
			4											
a)	Amount of Pollutant Released	1 to 3	1											
b)	Toxicity of Pollutant	0 to 3	1											
c)	Sensitivity of the Environment	0 to 3	1											
d)	Length of Time	1 to 3	3											
e)	Actual Exposure and Effects thereon	0 to 3	1											
Average Potential for Harm Factor			1.4	No										
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 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		\$880
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			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$910
Penalty =			\$5,310

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:	



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Environmental Enforcement
601 57th Street SE
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May 21, 2012

Gary Christian
Double C Enterprises, LLC
427 Kentuck Road, PO Box 39
Kenna, WV 25249

CERTIFIED RETURN RECEIPT REQUESTED
91 7199 9991 7030 8791 6188
RE: Violation of Chapter 22, Article 11
of the WV State Code

Dear Mr. Christian:

Enclosed is revised CONSENT ORDER NUMBER 7600 dated May 21, 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 Double C Enterprises, LLC violating Chapter 22, Article 11 of the WV State Code at its facility in Kenna, Jackson 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)
Cynthia Musser, Environmental Inspector Supervisor, EE/WW (via e-mail)
Jason Chambers, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)

revised September 2011

Promoting a healthy environment.