west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
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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

TO: Four-S Development
Attn: T.J. Summers
PO Box 2388
Charleston, WV 25328

DATE: July 31, 2012

ORDER NO.: 7653

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 Four-S Development (hereinafter "Four-S").

FINDINGS OF FACT

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

1. Four-S operates a construction operation with land disturbance located in Teays, Putnam County, West Virginia. Four-S was issued WV/NPDES General Water Pollution Control Permit No. WV0115924, General Permit Registration No. WVG071093, on April 20, 1998. 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 Legislative Rule 47CSR10.

3. WVDEP advised Four-S 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. Four-S 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 May 9, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, it was observed that all areas disturbed during construction were not adequately stabilized in order to allow permit termination.

   As a result of the aforementioned violation, Notice of Violation (NOV) No. I12-40-005-JCC was issued to Four-S.

6. On July 24, 2012, representatives of Four-S and WVDEP personnel met to discuss the terms and conditions of this Order.

7. On July 30, 2012, WVDEP personnel performed a file review. During the review, it was determined that Four-S had paid all Annual WV/NPDES Permit and Groundwater Protection Fees in a timely manner.

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. Four-S 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, Four-S shall either:

   a. 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

      OR

   b. satisfactorily stabilize the land disturbance previously covered under WV/NPDES Permit Registration No. WVG071093. Satisfactory stabilization means ALL disturbed areas shall be covered by some permanent protection. Stabilize includes pavement, buildings, waterways (riprap, concrete, grass, or pipe), a healthy vigorous stand of grass that uniformly covers more than seventy percent (70%) of the ground, stable outlet channels with velocity dissipation which directs site runoff to a natural watercourse, and any other approved structure or material.

OTHER PROVISIONS

1. Four-S 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, Four-S 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, Four-S 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 Four-S 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, Four-S 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 Four-S 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 Four-S 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 Four-S (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 Four-S 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 Four-S 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 Four-S, its successors and assigns.

7. This Order shall terminate upon Four-S' notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Attn: T.J. Summers Four-S Development	8-2-2012 Date
Scott G. Mandirola, Director Division of Water and Waste Management	Date

revised September 2011

RECEIVED
AUG 06 2012
ENVIRONMENTAL
ENFORCEMENT

RECEIVED AUG - 6 2012

AUG 1 2012

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
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July 31, 2012

T.J. Summers
Four-S Development
PO Box 2388
Charleston, WV 25328

CERTIFIED RETURN RECEIPT REQUESTED
91 7199 9991 7031 5497 1010

RE: Violation of Chapter 22, Article 11 of the WV State Code

Dear Mr. Summers:

Enclosed is revised CONSENT ORDER NUMBER 7653 dated July 31, 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 Four-S Development violating Chapter 22, Article 11 of the WV State Code at its facility located in Teays, Putnam 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.

RECEIVED AUG - 6 2012

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)
Shyrel Moellendick, MSSS, EE (via e-mail)

revised September 2011