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west virginia department of environmental protection

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Environmental Enforcement  
601 57<sup>th</sup> 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

November 19, 2012

Mark Mondo  
H G Energy  
PO Box 250  
Reno, OH 45773-0250

**CERTIFIED RETURN RECEIPT REQUESTED**

91 7199 9991 7031 5498 5345

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

Dear Mr. Mondo:

Enclosed is revised CONSENT ORDER NUMBER 7737 dated November 19, 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 H G Energy violating Chapter 22, Article 11 of the WV State Code at its facility located in Lubeck, Wood 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,

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Michael A. Zeto  
Chief Inspector

Enclosure

cc: Scott G. Mandirola, Director, DWWM (via e-mail)  
Yogesh Patel, Asst. Director, DWWM/Permits (via e-mail)  
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)  
Garland Roberts, Environmental Inspector, EE/WW (via e-mail)  
Shyrel Moellendick, MSSS, EE (via e-mail)

revised October 2012

Promoting a healthy environment.



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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  
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: Mr. Mark Mondo  
H G Energy  
PO Box 250  
Reno, OH, 45773-0250

DATE: November 19, 2012

ORDER NO.: 7737

**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 H G Energy.

**FINDINGS OF FACT**

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

1. H G Energy operates a land disturbance located in Wood County, West Virginia.
2. On January 3, 2012, 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. 47CSR10 Section 3.1 - H G Energy discharged pollutants from a point source into State waters without authorization pursuant to a WV/NPDES permit.
  - b. 22-11-8 - Greater than one (1) acre of land was disturbed without authorization pursuant to a WV/NPDES Permit for Storm Water Associated with Construction Activity.

As a result of the aforementioned violations, Notice of Violation (NOV) No. I12-54-01-GSR was issued to Mark Mondo.

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3. On January 24, 2012, H G Energy submitted an application for coverage under WV/NPDES Permit No. WV0115924.
4. On March 1, 2012, the permitting section of WVDEP Division of Water and Waste Management requested technical corrections to H G Energy's WV/NPDES permit application.
5. On June 11, 2012, WVDEP personnel conducted an inspection of the site and found continuing erosion associated with construction activities. It was further determined that no WV/NPDES permit for said construction activities had been completed, as instructed by NOV No. I12-54-01-GSR. This deficiency is a violation of WV Legislative Rule 47CSR10 Section 3.1 and WV State Code 22-11-8.
6. On June 26, 2012, Order No. 7660 was issued to H G Energy. The Order required H G Energy to cease and desist any further land development activities, to submit an administratively complete WV/NPDES permit application, and to immediately install and maintain necessary storm water and sediment/erosion control devices to prevent release of sediment-laden water into waters of the State.
7. On July 19, 2012, WVDEP personnel conducted an inspection of the facility and found continuing erosion due to incorrect installation of erosion and sediment controls. It was further determined that no WV/NPDES permit for construction activities had been completed, a violation of WV Legislative Rule 47CSR10 Section 3.1 and WV State Code 22-11-8. In addition, by failing to comply with Order No. 7660, H G Energy violated WV State Code 22-11-16.
8. On July 23, 2012, WVDEP personnel met at the site with Pickering Associates, consulting engineers for H G Energy, and discussed the erosion and sediment controls needed to satisfy the requirements of Order No. 7660.
9. On August 4, 2012, WVDEP personnel conducted an inspection of the facility and found continuing erosion due to incorrect installation of erosion and sediment controls. It was further determined that no WV/NPDES permit for construction activities had been completed, a violation of WV Legislative Rule 47CSR10 Section 3.1 and WV State Code 22-11-8. In addition, by failing to comply with Order No. 7660, H G Energy violated WV State Code 22-11-16.
10. On September 14, 2012, WV/NPDES Permit No. WV0115924, Registration No. WVR105909, was issued to cover construction activity at the H G Energy site.
11. On November 9, 2012, WVDEP personnel and representatives of H G Energy met to discuss the terms and conditions of this Order. During the meeting, it was agreed that erosion and sediment control deficiencies had been corrected by H G Energy.

### **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. H G Energy shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Because of H G Energy's WV State Code and WV Legislative Rule violations, H G Energy shall be assessed a civil administrative penalty of eighteen thousand seven hundred eighty dollars (\$18,780) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date 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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. H G Energy 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, H G Energy 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, H G Energy 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 H G Energy 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, H G Energy 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 H G Energy 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 H G Energy 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 H G Energy (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 H G Energy 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 H G Energy 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 H G Energy, its successors and assigns.
7. This Order shall terminate upon H G Energy's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
\_\_\_\_\_  
Mark Mondo  
H G Energy

11-21-12  
\_\_\_\_\_  
Date



NOV 26 2012

Public Notice begin:

ENVIRONMENTAL  
ENFORCEMENT

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date



January 3, 2012: workers pumping sediment laden water to unnamed tributary of Neal Run



January 3, 2012: waters of unnamed tributary of Neal Run



July 19, 2012: erosion along silt fence due to improper installation across contours



July 19, 2012: closer view of erosion at end of silt fence



September 4, 2012: silt deposited along driveway leading to site



September 4, 2012: site had been hydro-seeded, but silt fence had not been corrected



September 4, 2012: erosion along highway ditch due to increased flow from site



September 4, 2012: evidence of sediment laden water flowing to inlet below the site

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

H G Energy

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#													
			2	5	7	9										
a)	Amount of Pollutant Released	1 to 3	1	1	1	1										
b)	Toxicity of Pollutant	0 to 3	1	1	1	1										
c)	Sensitivity of the Environment	0 to 3	1	1	1	1										
d)	Length of Time	1 to 3	1	2	3	3										
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1										
<b>Average Potential for Harm Factor</b>			1	1.2	1.4	1.4	No									
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>														
	Degree of Non-Compliance	1 to 3	3	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 -	10		\$1,500
6.2.b.4 - Compliance/noncompliance history	25		\$3,750
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		10	(\$1,500)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$3,780</b>
<b>Penalty =</b>			<b>\$18,780</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	
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b>	