



west virginia department of environmental protection

Division of Water and Waste Management
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Charleston, WV 25304
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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: MPH Hotels, Inc.
Paul Eskenazi
785 Nina Drive
Tierra Verde, Florida 33715

DATE: July 25, 2014

ORDER NO.: 8105

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 MPH Hotels, Inc.

FINDINGS OF FACT

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

1. MPH Hotels, Inc. is conducting land disturbance activity in Parkersburg, Wood County, West Virginia. MPH Hotels, Inc. was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106566, on April 23, 2013.
2. On July 17, 2013, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of MPH Hotels, Inc.'s WV/NPDES permit was observed and documented:
 - a. G.4.b.5-MPH Hotels, Inc. failed to display the required public notice entrance sign for the duration of the project.

As a result of the aforementioned violation, Notice of Violation (NOV) No. I13-54-221-GSR was issued to MPH Hotels, Inc.

3. On August 13, 2013, WVDEP personnel conducted an inspection of the facility after a four inch (4") rain event. A recommendation was made to add super silt fence and fill slope protection to the site.
4. On September 11, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of MPH Hotels, Inc.'s WV/NPDES permit was observed and documented:
 - a. G.4.e.2.D.i-MPH Hotels, Inc. failed to inspect and clean all adjacent public and private roads of debris originating from the construction site.

As a result of the aforementioned violation, NOV No. I13-54-279-GSR was issued to MPH Hotels, Inc.

5. On October 29, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of MPH Hotels, Inc.'s WV/NPDES permit were observed and documented:
 - a. G.4.e.2.D.i-MPH Hotels, Inc. failed to inspect and clean all adjacent public and private roads of debris originating from the construction site.
 - b. G.4.e.2.A.i-MPH Hotels, Inc. failed to temporary seed and mulch all areas where construction activities had ceased for more than seven (7) days.
 - c. G.4.e.2.A.ii.f-MPH Hotels, Inc. failed to protect fill slopes by using measures to divert runoff away from the fill slopes to conveyance measures such as pipe slope drains or stable channels.
 - d. G.2-MPH Hotels, Inc. caused or allowed a non-stormwater discharge from the site. Specifically, the discharge originated from concrete truck washing activities.
 - e. D.1-MPH Hotels, Inc. failed to operate and maintain all erosion and sediment control devices. Specifically, silt fence, the stone at entrance the road, and the wattles at the abandoned entrance were inadequately operated and/or maintained.

As a result of the aforementioned violations, NOV Nos. I13-54-332-GSR through I13-54-336-GSR were issued to MPH Hotels, Inc.

6. On January 28, 2014, WVDEP and MPH Hotels, Inc. entered into Order No. 7983. The Order was issued in response to the aforementioned WV/NPDES permit violations.
7. On December 20, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, a violation of the following section of the terms and conditions of MPH Hotels Inc.'s WV/NPDES permit was observed and documented:
 - a. D.1 – MPH Hotels, Inc. failed to operate and maintain all erosion and sediment control devices. Specifically, silt fencing was inadequate.

As a result of the aforementioned violation, NOV No. I13-54-368-GSR was issued to MPH Hotels Inc.

8. On May 1, 2014, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of WV State Code, Legislative Rule, and MPH Hotels, Inc.'s WV/NPDES permit were observed and documented:
 - a. 47CSR2 Section 3.2.b-MPH Hotels, Inc. created conditions not allowable in waters of the State by causing or allowing sediment deposits on the bottom of the stream.
 - b. G.4.e.2.A.i.c-MPH Hotels, Inc. failed to immediately reseed and mulch all areas where the seed had failed to germinate adequately (uniform perennial vegetative cover with a density of 70%) within thirty (30) days after seeding and mulching.
 - c. G.4.e.2.C.iii-MPH Hotels, Inc. failed to protect groundwater by allowing a petroleum product to flow onto or under the land surface in such a manner that could impact groundwater quality. Specifically, MPH Hotels, Inc. utilized a bulk fuel storage tank without the plug installed in the secondary containment.
 - d. 22-11-1 et seq.-MPH Hotels, Inc. failed to comply with Order No. 7983. Specifically, MPH Hotels, Inc. failed to take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit. In addition, MPH Hotels, Inc. failed to provide a plan of corrective action and schedule, outlining action items and completion dates for how and when MPH Hotels, Inc. would achieve compliance with all terms and conditions of its WV/NPDES permit.
 - e. D.1-MPH Hotels, Inc. failed to operate and maintain all erosion and sediment control devices. Specifically, silt fence, the stone at the entrance road, and the wattles at the abandoned entrance were inadequately operated and/or maintained.

As a result of the aforementioned violations, NOV, Nos. I14-54-049-GSR through I14-54-053-GSR were issued to MPH Hotels, Inc.

9. On July 17, 2014, WVDEP personnel and representatives of MPH Hotels, Inc. discussed, by telephone, 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. MPH Hotels, Inc. shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules.
2. Within twenty (20) days of the effective date of this Order, MPH Hotels, Inc. shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when MPH Hotels, Inc. will achieve compliance with all terms and conditions of its WV/NPDES permit and pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0115924, Registration No. WVR106566, and Order No. 8105. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
SW Regional Environmental Enforcement Office
PO Box 662
Teays, WV 25569**

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 MPH Hotels, Inc.'s West Virginia Code, Legislative Rule and permit violations, MPH Hotels, Inc. shall be assessed a civil administrative penalty of twenty-three thousand two hundred thirty dollars (\$23,230) 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 include a reference to the Order No. and shall be mailed to:**

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

OTHER PROVISIONS

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



Paul Eskenazi *MICHAEL S. HARTZ, President*
MPH Hotels, Inc.

8/4/2014

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date



AUG 12 2014

ENVIRONMENTAL
ENFORCEMENT



Site after upset (08-13-13)



Murdoch Ave., one day after upset (08-14-13)



Murdoch Ave. sediment (9-11-13)



Emerson Ave. sediments (9-11-13)



Concrete truck wash area (10-29-13)



Concrete truck washing leading from site along 24th street (10-29-13)



Area left without stabilization and silt fence needs maintained (10-29-13)



Fill slope without protection (10-29-13)



Fill slope left without temporary stabilization (10-29-13)



Sediment on Murdoch Ave. (10-29-13)



Silt fence cut to discharge stormwater (10-29-13)



Opening beneath silt fence (10-29-13)



Additional opening beneath silt fence (10-29-13)



Stream bank left without stabilization (10-29-13)



Entrance road covered with sediments (10-29-13)



Storm inlet at corner of 24th St. and Murdoch Ave. (05/01/14)



Silt fence not properly connected at corner of Murdoch Ave. and Emerson Ave. (05/01/14)



Silt fence at end of Emerson Ave. not properly joined (05/01/14)



Torn silt fence along Emerson Ave. (05/01/14)



Sediments in stream from torn silt fence (05/01/14)



View of silt fence along Emerson Ave., note stream sediments from site (05/01/14)



Example of erosion rills on slopes (05/01/14)



Section of silt fence repaired, but not properly replaced as sediments still exiting site (05/01/14)



Sediments tracked from site to Emerson Ave. (05/01/14)



Storm inlet at entry to site (05/01/14)



Opening under silt fence at entrance to site (05/01/14)



View of site looking to corner of Emerson Ave. and Murdoch Ave. (05/01/14)



Plug in bulk fuel storage tank secondary containment missing (05/01/14)



Slopes along 24th St. have not been seeded or mulched (05/01/14)



Pipe slope drain outlet without stabilization, discharges to silt fence that is not properly maintained (05/01/14)



View up access road to site (05/01/14)

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: MPH Hotels, Inc Receiving Stream: Tributary of Pond Run

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#													
			7a	8a	8b	8c	8d	8e								
a)	Amount of Pollutant Released	1 to 3	3	3	1	1	1	3								
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	0	1								
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	0	1								
d)	Length of Time	1 to 3	2	1	1	1	1	3								
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	0	1								
Average Potential for Harm Factor			1.6	1.4	1	1	0.4	1.8	No							
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	1	3	2	1	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 -	30		\$4,800
6.2.b.4 - Compliance/noncompliance history	25		\$4,000
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	(\$1,600)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$7,230
Penalty =			\$23,230

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:	