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: MPH Hotels, Inc
Paul Eskenazi
785 Nina Drive
Tierra Verde, Florida 33715

DATE: December 4, 2013

ORDER NO.: 7983

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-The Permittee 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 sections of the terms and conditions of MPH Hotels, Inc's WV/NPDES Permit was observed and documented:

   a. G.4.e.2.D.i-The Permittee 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-The Permittee 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-The Permittee 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-The Permittee 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-The Permittee caused or allowed a non-stormwater discharge, in the form of concrete truck washing, from the site.
   e. D.1-The Permittee failed to operate and maintain all erosion and sediment control devices. Specifically silt fence, stone at the entrance road, and wattles at the abandoned entrance were not properly operated and 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 December 3, 2013, WVDEP personnel and a representative 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.

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. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0115924, Registration No. WVR106566, and Order No. 7983. 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 permit violations, MPH Hotels, Inc shall be assessed a civil administrative penalty of six thousand three hundred thirty dollars ($6,330) 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, MPH Hotels, Inc 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 MPH Hotels, Inc becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and MPH Hotels, Inc 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 MPH Hotels, Inc 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 MPH Hotels, Inc (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 P. HOLTZ
MPH Hotels, Inc

12/9/13
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised January 2013

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 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)

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# 4a	5a	5b	5c	5d	5e							
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1							
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1							
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1							
d)	Length of Time	1 to 3	1	2	1	1	1	1							
e)	Actual Exposure and Effects thereon	0 to 3	0	0	0	0	1	0							
	Average Potential for Harm Factor		0.8	1	0.8	0.8	1	0.8	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3	1	2	1	1	1	2							

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.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

1)	Potential for Harm Factor	Factor Range	FOF#												
a)	Amount of Pollutant Released	1 to 3													
b)	Toxicity of Pollutant	0 to 3													
c)	Sensitivity of the Environment	0 to 3													
d)	Length of Time	1 to 3													
e)	Actual Exposure and Effects thereon	0 to 3													
	Average Potential for Harm Factor		No	No	No	No	No	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3													

		Extent of Deviation from Requirement		
		Major	**Moderate**	**Minor**
Potential for Harm to Human Health or the Environment	**Major**	$8,000 to $10,000	$6,000 to $8,000	$5,000 to $6,000
	Moderate	$4,000 to $5,000	$3,000 to $4,000	$2,000 to $3,000
	Minor	$1,500 to $2,000	$1,000 to $1,500	Up to $1,000

FOF #	Potential for Harm	Extent of Deviation	Penalty	Multiple Factor	Base Penalty
4a	Minor	Minor	$800	1	$800
5a	Minor	Moderate	$1,500	1	$1,500
5b	Minor	Minor	$800	1	$800
5c	Minor	Minor	$800	1	$800
5d	Minor	Minor	$1,000	1	$1,000
5e	Minor	Moderate	$1,400	1	$1,400
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
0	FALSE	FALSE	FALSE	1	$0
Total Base Penalty					$6,300

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		$630
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		10	($630)
6.2.b.5 - Ability to Pay			$0
Penalty Adjustments			**$30**
Penalty =			**$6,330**

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:	