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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  
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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

**CONSENT ORDER  
ISSUED UNDER THE  
WATER POLLUTION CONTROL ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Maynard's Machine & Hydraulic, Inc.  
Pete Maynard  
PO Box O  
Holden, WV 25625

DATE: January 28, 2013  
ORDER NO.: 7703

**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 Maynard's Machine & Hydraulic, Inc. (hereinafter "Maynard's").

**FINDINGS OF FACT**

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

1. Maynard's operates an industrial facility located in Holden, Logan County, West Virginia.
2. On April 11, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an investigation of the facility in response to a complaint. During the investigation, it was observed that Maynard's manufactures equipment or commercial machinery without authorization pursuant to a WV/NPDES General Permit for Storm Water Associated with Industrial Activities. This deficiency is a violation of WV State Code 22-11-8.

As a result of the aforementioned violation, Notice of Violation (NOV) No. I11-23-060-MBC was issued to Maynard's.

3. On December 12, 2011, in response to the aforementioned violation, WVDEP issued Order No. 7505 to Maynard's. The Order required Maynard's to immediately initiate

Promoting a healthy environment.

action necessary for the submission of an administratively complete WV/NPDES permit application.

4. On July 13, 2012, WVDEP personnel conducted a file review. During this review, it was determined that Maynard's had not submitted an administratively complete WV/NPDES permit application, as required by Order No. 7505. Failure to comply with an Order is a violation of WV State Code 22-11-16.
5. On January 14, 2013, a meeting was held between WVDEP and Maynard 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. Maynard's shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within ten (10) days of the effective date of this Order, Maynard's shall submit an administratively complete application for registration under the WV/NPDES General Permit for Storm Water Associated with Industrial Activities. The application shall be submitted to:

**Industrial Storm Water- Permitting Section  
Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

3. Because of Maynard's West Virginia Code violations, Maynard's shall be assessed a civil administrative penalty of four thousand six hundred fifty dollars (\$4,650) 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 \$387.50 due on or before April 1, 2013.  
Payment 2 in the amount of \$387.50 due on or before May 1, 2013.  
Payment 3 in the amount of \$387.50 due on or before June 1, 2013.  
Payment 4 in the amount of \$387.50 due on or before July 1, 2013.  
Payment 5 in the amount of \$387.50 due on or before August 1, 2013.  
Payment 6 in the amount of \$387.50 due on or before September 1, 2013.  
Payment 7 in the amount of \$387.50 due on or before October 1, 2013.  
Payment 8 in the amount of \$387.50 due on or before November 1, 2013.  
Payment 9 in the amount of \$387.50 due on or before December 1, 2013.  
Payment 10 in the amount of \$387.50 due on or before January 1, 2014.  
Payment 11 in the amount of \$387.50 due on or before February 1, 2014.  
Payment 12 in the amount of \$387.50 due on or before March 1, 2014.

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. Maynard'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, Maynard'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, Maynard'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 Maynard'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, Maynard'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 Maynard'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 Maynard'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 Maynard'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 Maynard'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 Maynard'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 Maynard's, its successors and assigns.
- 7. This Order shall terminate upon Maynard's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Pete Maynard  
 Pete Maynard  
 Maynard's Machine & Hydraulic, Inc.

2-5-13  
 Date

Public Notice begin:

\_\_\_\_\_  
 Date

Public Notice end:

\_\_\_\_\_  
 Date

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

\_\_\_\_\_  
 Date

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Maynard's Machine and Hydraulics inc. Receiving Stream: Copperas Mine 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# |     |    |    |    |    |    |    |    |    |    |    |
|--|-------------------------------------|---------------------|------|-----|----|----|----|----|----|----|----|----|----|----|
|  |                                     |                     | 2    | 4   |    |    |    |    |    |    |    |    |    |    |
| a)                                       | Amount of Pollutant Released        | 1 to 3              | 1    | 1   |    |    |    |    |    |    |    |    |    |    |
| b)                                       | Toxicity of Pollutant               | 0 to 3              | 0    | 0   |    |    |    |    |    |    |    |    |    |    |
| c)                                       | Sensitivity of the Environment      | 0 to 3              | 0    | 0   |    |    |    |    |    |    |    |    |    |    |
| d)                                       | Length of Time                      | 1 to 3              | 1    | 3   |    |    |    |    |    |    |    |    |    |    |
| e)                                       | Actual Exposure and Effects thereon | 0 to 3              | 0    | 0   |    |    |    |    |    |    |    |    |    |    |
| <b>Average Potential for Harm Factor</b> |                                     |                     | 0.4  | 0.8 | No |
| 2)                                       | <b>Extent of Deviation Factor</b>   | <b>Factor Range</b> |      |     |    |    |    |    |    |    |    |    |    |    |
|  | Degree of Non-Compliance            | 1 to 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.



|   |          | 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   |
|---------------------------|--------------------|---------------------|---------|-----------------|----------------|
| 2                         | Minor              | Major               | \$1,700 | 1               | \$1,700        |
| 4                         | Minor              | Major               | \$1,900 | 1               | \$1,900        |
| 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            |
| 0                         | FALSE              | FALSE               | FALSE   | 1               | \$0            |
| 0                         | FALSE              | FALSE               | FALSE   | 1               | \$0            |
| 0                         | FALSE              | FALSE               | FALSE   | 1               | \$0            |
| 0                         | FALSE              | FALSE               | FALSE   | 1               | \$0            |
| <b>Total Base Penalty</b> |                    |                     |         |                 | <b>\$3,600</b> |

## 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 -                                  | 5          |            | \$180                    |
| 6.2.b.4 - Compliance/noncompliance history                                 | 25         |            | \$900                    |
| 6.2.b.6 - Economic benefits -<br>(flat monetary increase)                  | \$300      |            | \$300                    |
| 6.2.b.7 - Public Interest -<br>(flat monetary increase)                    |            |            | \$0                      |
| 6.2.b.8 - Loss of enjoyment -<br>(flat monetary increase)                  |            |            | \$0                      |
| 6.2.b.9 - Investigative costs -<br>(flat monetary increase)                |            |            | \$0                      |
| 6.2.b.10 - Other factors (size of violator)                                |            |            | \$0                      |
| 6.2.b.10 - Additional Other Factors -<br>Increase (flat monetary increase) |            |            | \$0                      |
| 6.2.b.10 - Additional Other Factors -<br>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         | (\$360)                  |
| 6.2.b.5 - Ability to Pay   |            |            | \$0                      |
| <b>Penalty Adjustments</b>   |            |            | <b>\$1,050</b>           |
| <b>Penalty =</b>   |            |            | <b>\$4,650</b>           |

| Estimated Economic Benefit Item                                    | Estimated Benefit (\$) |
|--|------------------------|
| Monitoring & Reporting   | \$300                  |
| 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>\$300</b>           |
| <b>Comments:</b>   |                        |