



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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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: Mondo Building and Excavating, Inc.
ATTN: Mark Mondo
PO Box 250
Reno, OH, 45773-0250

DATE: December 7, 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 Mondo Building and Excavating, Inc. (hereinafter, "Mondo").

FINDINGS OF FACT

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

1. Mondo conducted 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 - Mondo 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 Mondo.

Promoting a healthy environment.

3. On January 24, 2012, Mondo 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 Mondo'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 Mondo. The Order required Mondo 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, Mondo violated WV State Code 22-11-1 et seq.
8. On July 23, 2012, WVDEP personnel met at the site with Pickering Associates, consulting engineers for Mondo, 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, Mondo violated WV State Code 22-11-1 et seq.
10. On September 14, 2012, WV/NPDES Permit No. WV0115924, Registration No. WVR105909, was issued to cover construction activity at the Mondo site.
11. On November 9, 2012, WVDEP personnel and representatives of Mondo 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 Mondo.

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. Mondo 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 Mondo's WV State Code and WV Legislative Rule violations, Mondo 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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

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



 Mark Mondo
 Mondo Building and Excavating, Inc.

12-11-2012

 Date

Public Notice begin: 

 Date

DEC 12 2012

Public Notice end: ENVIRONMENTAL
 ENFORCEMENT

 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: Mondo Building and Excavating, Inc. 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											
Average Potential for Harm Factor			1	1.2	1.4	1.4	No										
2)	Extent of Deviation Factor	Factor Range															
	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
Penalty Adjustments			\$3,780
Penalty =			\$18,780

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:	



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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December 7, 2012

Mondo Building and Excavating, Inc.
ATTN: Mark Mondo
PO Box 250
Reno, OH 45773-0250

CERTIFIED RETURN RECEIPT REQUESTED

91 7199 9991 7031 5500 3833

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

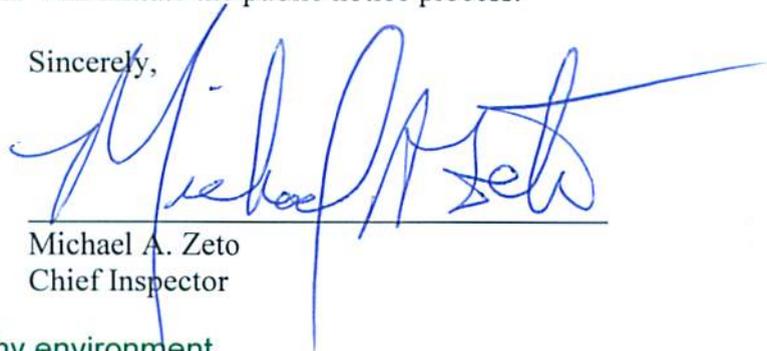
Dear Mr. Mondo:

Enclosed is revised CONSENT ORDER NUMBER 7737 dated December 7, 2012. Originally, this Consent Order was issued to you under the facility name, HG Energy. However, it has come to our attention that Mondo Building and Excavating, Inc. is a contractor conducting construction activities for one of HG Energy's projects, and is not, therefore, a representative of HG Energy. Upon a review of files, it was determined that Mondo Building and Excavating, Inc. obtained WV/NPDES permit coverage for the activities discussed in this Consent Order. Because Mondo Building and Excavating, Inc. is the responsible party for the permit, a revised Consent Order reflecting the appropriate responsible party must go to public notice. The Consent Order is, therefore, being re-issued to the proper responsible party, Mondo Building and Excavating, Inc. Upon receipt by WVDEP personnel of the signed Consent Order, the public notice process will be initiated once again.

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 Mondo Building and Excavating, Inc. violating Chapter 22, Article 11 of the WV State Code at the 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,



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