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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

July 26, 2013

Bill Isaly, COO  
Mountain River Physical Therapy  
416 37th St.  
Parkersburg, WV 26101

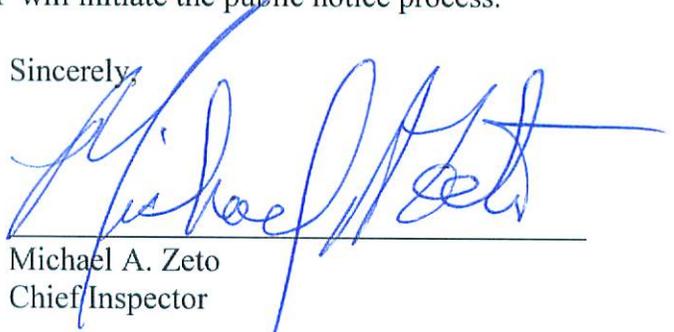
**CERTIFIED RETURN RECEIPT REQUESTED**  
91 7199 9991 7032 6246 5326  
**RE: Violation of Chapter 22, Article 11**  
**of the WV State Code**

Dear Mr. Isaly:

Enclosed is revised CONSENT ORDER NUMBER 7842 dated July 26, 2013. 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 Mountain River Physical Therapy violating Chapter 22, Article 11 of the WV State Code at its facility located in Parkersburg, 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: Mountain River Physical Therapy  
Bill Isaly, COO  
416 37<sup>th</sup> St.  
Parkersburg, WV 26101

DATE: July 26, 2013  
ORDER NO.: 7842

**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 Mountain River Physical Therapy (hereinafter "Mountain River PT").

**FINDINGS OF FACT**

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

1. Mountain River PT is conducting land disturbance activity in Parkersburg, Wood County, West Virginia. Mountain River PT was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR106258, on October 26, 2012.
2. On December 27, 2012, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Mountain River PT's WV/NPDES permit were observed and documented:
  - a. Section D.1 - The Permittee failed to operate and maintain Erosion and Sediment (E & S) controls. Specifically, silt fence was not properly installed or maintained. No sediment trap was installed at the outlet from the site.
  - b. Section C.15 - The Permittee failed to post the required outlet marker at the permitted outlet.

- c. Section G.4.e.2.C.vi. - The Permittee failed to maintain inspection records of E & S controls on site and available for review.
- d. Section G.4.e.1.E. - The Permittee failed to install a stone access entrance and exit to reduce the tracking of sediment onto public or private roads.
- e. Section G.4.b.5. - The Permittee failed to display a public notice sign near the entrance to the construction site for the duration of the project.
- f. Section G.4.b.2.A.ii.j. - The Permittee allowed sediment laden water to leave the site without going through an appropriate device.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. I13-54-02-GSR through I13-54-07-GSR were issued to Mountain River PT.

3. On March 19, 2013, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Mountain River PT's WV/NPDES permit were observed and documented:
  - a. Section D.1 - The Permittee failed to operate and maintain E & S controls. Specifically, silt fence was not properly installed or maintained. No sediment trap was installed at the outlet from the site.
  - b. Section C.15 - The Permittee failed to post the required outlet marker at the permitted outlet.
  - c. Section G.4.e.2.C.vi. - The Permittee failed to maintain inspection records of E & S controls on site and available for review.
  - d. Section G.4.e.1.E. - The Permittee failed to install a stone access entrance and exit to reduce the tracking of sediment onto public or private roads.
  - e. Section G.4.b.5. - The Permittee failed to display a public notice sign near the entrance to the construction site for the duration of the project.
  - f. Section G.4.e.2.D - The Permittee failed to inspect all erosion and sediment control devices at least once every seven (7) calendar days and within twenty-four (24) hours of any storm event of greater than 0.5 inches of rain per twenty-four (24) hour period.
  - g. Section G.4.e.2.A.i.d. - The Permittee failed to stabilize all temporary diversions immediately and prior to becoming functional.
  - h. Section 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.

As a result of the aforementioned violations, NOV Nos. I13-54-72-GSR through I13-54-79-GSR were issued to Mountain River PT.

4. On July 18, 2013, WVDEP personnel and representatives of Mountain River PT met 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. Mountain River PT 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, Mountain River PT shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Mountain River PT 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. WVR106258 and Order No. 7842. 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 57<sup>th</sup> 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.

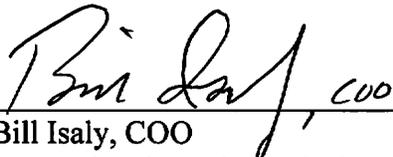
3. Because of Mountain River PT's permit violations, Mountain River PT shall be assessed a civil administrative penalty of six thousand five hundred forty dollars (\$6,540) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (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 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. Mountain River PT 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, Mountain River PT 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, Mountain River PT 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 Mountain River PT 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, Mountain River PT 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 Mountain River PT becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Mountain River PT 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 Mountain River PT 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 Mountain River PT (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 Mountain River PT 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 Mountain River PT 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 Mountain River PT, its successors and assigns.

7. This Order shall terminate upon Mountain River PT's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
\_\_\_\_\_  
Bill Isaly, COO  
Mountain River Physical Therapy

8-1-13  
\_\_\_\_\_  
Date

Public Notice begin:

\_\_\_\_\_  
Date

Public Notice end:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

*revised January 2013*

**RECEIVED**

AUG - 5 2013

ENVIRONMENTAL  
ENFORCEMENT



Erosion rill on fill slope which lacks protection



Silt fence has not been properly trenched



Sections of silt fence were not properly connected



Construction entrance does not have sufficient stabilization



Silt fence in same areas as above lacks maintenance



Diversion from back of site is not stabilized and silt fence should not be installed across concentrated flow



Silt fence has not been maintained



Sediments were bypassing the E & S controls at the outlet.  
Silt fence was installed across concentrated flow, and no proper sediment trap was constructed

# Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Mountain River Physical Therapy Receiving Stream: 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#											
			3a	3b	3c	3d	3e	3f	3g	3h				
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1	1	1				
b)	Toxicity of Pollutant	0 to 3	1	0	0	1	0	1	1	1				
c)	Sensitivity of the Environment	0 to 3	1	0	0	1	0	1	1	1				
d)	Length of Time	1 to 3	1	1	1	1	1	1	1	1				
e)	Actual Exposure and Effects thereon	0 to 3	1	0	0	1	0	1	1	1				
<b>Average Potential for Harm Factor</b>			1	0.4	0.4	1	0.4	1	1	1	No	No	No	No
2)	<b>Extent of Deviation Factor</b>	<b>Factor Range</b>												
	Degree of Non-Compliance	1 to 3	1	1	1	1	1	1	1	1				

**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		\$620
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		5	(\$310)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>\$340</b>
<b>Penalty =</b>			<b>\$6,540</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>	