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
www.dep.wv.gov

September 20, 2011

Mr. Wesley R. Walls
Mountaineer Hardwoods, Inc.
P.O. Box 304
Slanesville, WV 25444

CERTIFIED RETURN RECEIPT REQUESTED

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

Dear Mr. Walls:

Enclosed is revised CONSENT ORDER NUMBER 7357 dated September 20, 2011. 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 Mountaineer Hardwoods, Inc. violating Chapter 22, Article 11 of the WV State Code at its facility located near Slanesville, Hampshire County, West Virginia. This revision is based upon your recent submittal of information to 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
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)
Robin C. Dolly, Environmental Inspector Supervisor, EE/WW (via e-mail)
Rhod Mills, Environmental Inspector, EE/WW (via e-mail)

revised September 2011

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

TO: Mr. Wesley R. Walls
Mountaineer Hardwoods, Inc.
P.O. Box 304
Slanesville, WV 25444

DATE: September 20, 2011

ORDER NO.: 7357

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 Mountaineer Hardwoods, Inc., (hereinafter "Mountaineer Hardwoods").

FINDINGS OF FACT

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

1. Mountaineer Hardwoods operates a timber processing facility located near Slanesville, Hampshire County, West Virginia. Mountaineer Hardwoods was issued WV/NPDES Water Pollution Control Permit No. WV0111457, Registration No. WVG610658 on June 28, 1996. Said registration expired on September 30, 2009.

2. Establishments with discharges composed entirely of stormwater associated with industrial activities must obtain a permit from the West Virginia Department of Environmental Protection (WVDEP) pursuant to §22-11-8 of the State Code of West Virginia and as described in Legislative Rule Title 47, Series 10.

3. WVDEP advised Mountaineer Hardwoods in mid-2009, early -2010, and January 2011 to reapply for permit registration coverage under the Multi-Sector General WV/NPDES Water Pollution Control Permit for Stormwater Discharges Associated with Industrial Activity.

4. On May 18, 2011, Mountaineer Hardwoods' permit was reissued.

5. On July 7, 2011, Mountaineer Hardwoods submitted a letter to WVDEP concerning the renewal of its permit.

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. Mountaineer Hardwoods shall immediately take all measures to initiate compliance with all pertinent laws and rules.

2. Within forty-five (45) days of entry of this Order, Mountaineer Hardwoods shall submit an administratively complete application for permit coverage for the regulated activity. This application shall be submitted to:

Permitting Section
DWWM
ATTN: Patrick D. Burch
601 57th Street
Charleston, WV 25304

3. Because of Mountaineer Hardwoods' West Virginia Code violations, Mountaineer Hardwoods shall be assessed a civil administrative penalty of four thousand eight hundred seventy dollars ($4,870) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of entry 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. Mountaineer Hardwoods 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, Mountaineer Hardwoods 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, Mountaineer Hardwoods 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 Mountaineer Hardwoods other than proceedings, administrative or civil, to enforce this Order.

regarding liability or responsibility in any proceedings regarding Mountaineer Hardwoods 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, Mountaineer Hardwoods 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 Mountaineer Hardwoods 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 Mountaineer Hardwoods 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 Mountaineer Hardwoods (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 Mountaineer Hardwoods 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 Mountaineer Hardwoods 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 Mountaineer Hardwoods, its successors and assigns.

7. This Order shall terminate upon Mountaineer Hardwoods' notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Wesley R. Walls by Sandra Walls Sec/Treas
Wesley R. Walls
Mountaineer Hardwoods, Inc.

FEB 27 2012
Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

_____
Date

revised January 2011

As Mr Wesley Walls is away, I am signing on his behalf as an officer of the corporation because I know this is overdue.

If this is not permitted, he will return March 1st, and will sign at that time.
Please advise.

Thank you.
Sandra Walls