



west virginia department of environmental protection

Division of Water and Waste Management
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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: Chuck Peperak
McDonald's Corporation, McDonald's USA, LLC
1000 Omega Drive
Pittsburgh, PA 15205

DATE: November 3, 2011
ORDER NO.: 7446

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 McDonald's Corporation, McDonald's USA, LLC (hereinafter "McDonald's").

FINDINGS OF FACT

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

1. McDonald's operates a land disturbance associated with construction activity, referred to as McDonald's Restaurant, located in Sissonville, Kanawha County, West Virginia. McDonald's was issued WV/NPDES Water Pollution Control Permit No. WV0115924, Registration No. WVR105608 on June 30, 2011.
2. On July 13, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel inspected the project and observed and documented the following violations:
 - a. Permittee failed to properly operate and maintain silt fence around the perimeter of the site. This is a violation of the WV/NPDES permit Section D.1.
 - b. Permittee failed to inspect all erosion control devices at least once every seven (7) calendar days and within 24 hours after any storm event of greater than 0.5 inches of rain per 24 hour period. This is a violation of the WV/NPDES permit Section G.4.e.2.D.

Promoting a healthy environment.

- c. Permittee failed to comply with the General Permit and Storm Water Pollution Prevention Plan (SWPPP). Several erosion control devices were not in place as detailed by the SWPPP, including drop inlet protections. This is a violation of the WV/NPDES permit Section B.
 - d. Permittee failed to display a public notice sign at or near the entrance to the site for the duration of the project. This is a violation of the WV/NPDES permit Section G.4.b.5.
 - e. Permittee allowed sediment laden water to leave the site without first going through an appropriate Best Management Practice (BMP), due to silt fence being down in several areas. This is a violation of the WV/NPDES permit Section G.4.e.2.A.ii.j.
 - f. Permittee commenced construction activity with land disturbance of one (1) acre or greater without prior authorization pursuant to a WV/NPES permit. The project was documented to have started on June 2, 2011 by the Project Manager, Keith Thomas, however the permit for this project was not issued until June 30, 2011. This is a violation of WV Code 22-11-1 et. seq.
3. On November 1, 2011, WVDEP personnel and a representative of McDonald's 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. McDonald's shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Because of McDonald's West Virginia Code and permit violations, McDonald's shall be assessed a civil administrative penalty of eleven thousand four hundred thirty dollars (\$11,430) 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. McDonald'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, McDonald'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, McDonald'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 McDonald'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, McDonald'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 McDonald'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 McDonald'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 McDonald'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 McDonald'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 McDonald'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 McDonald's, its successors and assigns.
7. This Order shall terminate upon McDonald's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Chuck Peperak
McDonald's Corporation, McDonald's USA, LLC

Date

Public Notice begin: _____
Date

Public Notice end: _____
Date

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

Date