west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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Austin Caperton, Cabinet Secretary
www.dep.wv.gov

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

TO: City of Philippi
ATTN: Jeremy Drennen, City Manager
P.O. Box 460
344 South Main St.
Philippi, WV 26416

DATE: February 7, 2019

ORDER NO.: 8882

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 City of Philippi (hereinafter "Philippi").

FINDINGS OF FACT

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

1. Philippi operates a wastewater treatment plant located in Philippi, Barbour County, West Virginia. Philippi was reissued WV/NPDES Water Pollution Control Permit No. WV0021857 on August 23, 2012 and August 21, 2018.

2. On July 19, 2018, West Virginia Department of Environmental Protection (WVDEP) personnel received a citizen complaint (Emergency Spill Notification No. 01-78386) indicating there were dead fish in the stream and a strong smell of sewage. During the investigation, WVDEP personnel determined that the spill was the result of an overflow from Philippi's sewage collection system. Violations of the following sections of WV Legislative Rules were observed and documented:

a. 47CSR2 Section 3.2.b - Philippi caused conditions not allowable in waters of the State. Specifically, Philippi discharged raw sewage into Shooks Run, a tributary of the Tygart Valley River, and deposits were observed on the creek bed.
b. 47CSR2 Section 3.2.e - Philippi caused conditions not allowable in waters of the State. Specifically, Philippi discharged raw sewage into Shooks Run that was harmful, hazardous, or toxic to man, animal, or aquatic life. The release of raw sewage resulted in 234 dead fish of five different species.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W18-01-003-CJM was issued to Philippi.

3. On November 27, 2018 and January 30, 2019, WVDEP personnel met with representatives of Philippi 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. Philippi shall immediately take all measures to initiate compliance with all pertinent laws and rules.

2. Within twenty (20) days of the effective date of this Order, Philippi shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Philippi will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to WV/NPDES Permit No. WV0021857 and Order No. 8882. The plan of corrective action shall be submitted to:

Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th 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 Philippi's Legislative Rule violations, Philippi shall be assessed a civil administrative penalty of nine thousand two hundred thirty dollars ($9,230) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund, in accordance with the following twelve (12) month payment schedule: Seven hundred sixty-nine dollars and sixteen cents ($769.16) shall be submitted within thirty (30) days after the effective date of this Order and by the first day of each month thereafter for the next ten (10) months. Seven hundred sixty-nine dollars and twenty-four cents ($769.24) shall be submitted by the first day of the final month.

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 57th Street SE
Charleston, WV 25304

OTHER PROVISIONS

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

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

Jeremy Drennen, City Manager
City of Philippi

3/11/19
Date

Public Notice begin:

Date

Public Notice end:

Date

Harold D. Ward, Acting Director
Division of Water and Waste Management

Date

07/19/2018 Photos:

DSCF8807: Beneath the concrete lies the pipe where raw sewage was free flowing.

DSCF8786: Dead fish observed in Shooks Run.

DSCF8785: Solids present on the streambed and a dead fish in Shooks Run.

DSCF8857: Dead fish in Shooks Run downstream from the bridge.

DSCF8844: Immobile Crawfish in Shooks Run near the release. Solids present on the streambed.

DSCF8792: Dead fish and murky water observed on Shooks Run.

07/26/2018 Photos:

DSCF8933: Foam and algae present on Shooks Run.

DSCF8939: Concrete slab which covers the pipe, almost fully submerged.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: City of Philippi **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# 2a	2b											
a)	Amount of Pollutant Released	1 to 3	1	1											
b)	Toxicity of Pollutant	0 to 3	1	1											
c)	Sensitivity of the Environment	0 to 3	2	2											
d)	Length of Time	1 to 3	1	1											
e)	Actual Exposure and Effects thereon	0 to 3	3	3											
	Average Potential for Harm Factor		1.6	1.6	No	No	No	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	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.

Continue rating Findings of Facts (FOF) here, if necessary. Otherwise, continue on Page 3.

1)	**Potential for Harm Factor**	**Factor Range**	**FOF#**												
a)	Amount of Pollutant Released	1 to 3													
b)	Toxicity of Pollutant	0 to 3													
c)	Sensitivity of the Environment	0 to 3													
d)	Length of Time	1 to 3													
e)	Actual Exposure and Effects thereon	0 to 3													
	Average Potential for Harm Factor		No	No	No	No	No	No	No	No	No	No	No	No	No
2)	**Extent of Deviation Factor**	**Factor Range**													
	Degree of Non-Compliance	1 to 3													

		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
2a	Moderate	Major	$4,600	1	$4,600
2b	Moderate	Major	$4,600	1	$4,600
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
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
Total Base Penalty					$9,200

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		$920
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		10	($920)
6.2.b.5 - Ability to Pay			$0
Penalty Adjustments			**$30**
Penalty =			**$9,230**

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: Economic benefit not warranted.