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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  
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Austin Caperton, Cabinet Secretary  
dep.wv.gov

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

TO: Go-Mart, Inc.  
Attn: Environmental Director Mike Conant  
915 Riverside Drive  
Gassaway, WV 26624

DATE: September 17, 2020

ORDER NO.: 9869

**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 22-11-1 et seq. to Go-Mart, Inc. (hereinafter "Go-Mart").

**FINDINGS OF FACT**

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

1. Go-Mart operates a wastewater treatment plant located near Salem, Harrison County, West Virginia. Go-Mart was reissued WV/NPDES Water Pollution Control Permit No. WV0103110, Registration No. WVG550946, on August 14, 2016.
2. On November 20, 2019, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the WV/NPDES permit were observed and documented:
  - a. Section A.3 - Go-Mart exceeded its permit parameters.
  - b. Appendix A.II.1 – Go-Mart failed to properly operate and maintain the facility. Specifically:
    - i. A build-up of floating solids and scum was present within the clarifier.
    - ii. One of the two sand filter beds was inoperable.

Promoting a healthy environment.

- iii. Improper filter media had been used in both sand filter beds.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W19-17-059-JDM was issued to Go-Mart.

3. On March 22, 2020, WVDEP personnel conducted a review of facility records from the time period of January 1, 2018 through December 31, 2019. During this review, the following violations of the terms and conditions of Go-Mart's WV/NPDES permit were observed:
  - a. Section A.3 – Thirty-three (33) exceedances of Go-Mart's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
    - i. Minor violations-nine (9)
    - ii. Moderate violations-sixteen (16)
    - iii. Major violations-eight (8)
4. On August 26, 2020, WVDEP personnel met with Go-Mart representatives to discuss the terms and conditions of this Order.

### **ORDER FOR COMPLIANCE**

Now, therefore, in accordance with West Virginia State Code 22-11-1 et seq., it is hereby agreed between the parties, and ORDERED by the Director:

1. Go-Mart 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, Go-Mart shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Go-Mart 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. WV0103110, Registration No. WVG550946, and Order No. 9869. The plan of corrective action 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 Go-Mart's permit violations, Go-Mart shall be assessed a civil administrative penalty of twenty-seven thousand three hundred thirty dollars (\$27,330) 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:

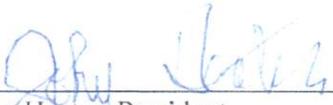
**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. Go-Mart hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21. Under this Order, Go-Mart 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, Go-Mart 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 Go-Mart 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, Go-Mart 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 Go-Mart becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Go-Mart 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 Go-Mart 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 Go-Mart (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 Go-Mart 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 Go-Mart 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 Go-Mart, its successors and assigns.
- 7. This Order shall terminate upon Go-Mart's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

  
 \_\_\_\_\_  
 John Heater, President  
 Go-Mart, Inc.

  
 \_\_\_\_\_  
 Date

Public Notice begin:

\_\_\_\_\_  
 Date

Public Notice end:

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Katheryn Emery, P.E., Acting Director  
 Division of Water and Waste Management

\_\_\_\_\_  
 Date

Photos



DSCF7187: Inside the clarifier.



DSCF7190: Inside the operable sand filter bed.



DSCF7191: The inoperable sand filter bed.

Table One: Go-Mart, Inc. DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 01/01/2018 through 12/31/2019						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
06/30/2018	BOD5	mg/l	5	19.7	294%	-	X	-
09/30/2018	BOD5	mg/l	5	14.5	190%	-	X	-
12/31/2018	BOD5	mg/l	10	10.4	4%	X	-	-
06/30/2019	BOD5	mg/l	5	5.6	12%	X	-	-
06/30/2018	Total Suspended Solids	mg/l	30	62	107%	-	X	-
12/31/2018	Total Suspended Solids	mg/l	30	72	140%	-	X	-
06/30/2018	Ammonia Nitrogen	mg/l	3	39.2	1207%	-	-	X
09/30/2018	Ammonia Nitrogen	mg/l	3	24.2	707%	-	-	X
12/31/2018	Ammonia Nitrogen	mg/l	6	36.5	508%	-	-	X
03/31/2019	Ammonia Nitrogen	mg/l	6	22.2	270%	-	X	-
06/30/2019	Ammonia Nitrogen	mg/l	3	27	800%	-	-	X
09/30/2019	Ammonia Nitrogen	mg/l	3	34.4	1047%	-	-	X
03/31/2018	Fecal Coliform	Cnts/100ml	200	1300	550%	-	-	X
06/30/2018	Fecal Coliform	Cnts/100ml	200	770	285%	-	X	-
12/31/2018	Fecal Coliform	Cnts/100ml	200	461.1	131%	-	X	-
03/31/2019	Fecal Coliform	Cnts/100ml	200	2420	1110%	-	-	X
06/30/2019	Fecal Coliform	Cnts/100ml	200	2420	1110%	-	-	X

Outlet 001 DMR Exceedances - MAX. DAILY - 01/01/2018 through 12/31/2019						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
06/30/2018	BOD5	mg/l	10	19.7	97%	X	-	-
09/30/2018	BOD5	mg/l	10	14.5	45%	X	-	-
06/30/2018	Total Suspended Solids	mg/l	60	62	3%	X	-	-
12/31/2018	Total Suspended Solids	mg/l	60	72	20%	X	-	-
06/30/2018	Ammonia Nitrogen	mg/l	6	39.2	553%	-	X	-
09/30/2018	Ammonia Nitrogen	mg/l	6	24.2	303%	-	X	-
12/31/2018	Ammonia Nitrogen	mg/l	12	36.5	204%	-	X	-
03/31/2019	Ammonia Nitrogen	mg/l	12	22.2	85%	X	-	-
06/30/2019	Ammonia Nitrogen	mg/l	6	27	350%	-	X	-
09/30/2019	Ammonia Nitrogen	mg/l	6	34.4	473%	-	X	-
03/31/2018	Fecal Coliform	Cnts/100ml	400	1300	225%	-	X	-
06/30/2018	Fecal Coliform	Cnts/100ml	400	770	93%	X	-	-
12/31/2018	Fecal Coliform	Cnts/100ml	400	461.1	15%	X	-	-
03/31/2019	Fecal Coliform	Cnts/100ml	400	2420	505%	-	X	-
06/30/2019	Fecal Coliform	Cnts/100ml	400	2420	505%	-	X	-

Outlet 001 DMR Exceedances - pH INSTANTANEOUS. MIN. - 01/01/2018 through 12/31/2019						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
09/30/2019	pH	S.U.	6.0	5.11	118.7%		X	

Outlet 001 Totals						Degree of non-compliance		
						Min	Mod	Maj
						9	16	8

## Base Penalty Calculation

(pursuant to 47CSR1-6.1)

**Responsible Party:** Go-Mart, Inc. **Receiving Stream:** \_\_\_\_\_

**Treatment System Design Maximum Flow:** 0.0015 MGD

**Treatment System Actual Average Flow:** 0.0015 MGD (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#														
			2b	3a1	3a11	3a111											
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	1	1	1											
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1											
<b>Average Potential for Harm Factor</b>			1	1	1	1	No										
2)	Extent of Deviation Factor	Factor Range															
	Degree of Non-Compliance	1 to 3	3	1	2	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  $\leq 40\%$  for Avg. Monthly or  $\leq 100\%$  for Daily Max., exceed numeric WQ standard by  $\leq 100\%$ , or report doesn't contain some minor information.

**Moderate** = exceedance of permit limit by  $\geq 41\%$  and  $\leq 300\%$  for Avg. Monthly,  $\geq 101\%$  and  $\leq 600\%$  for Daily Max., exceed numeric WQ standard by  $\geq 101\%$  and  $\leq$  of 600% or report doesn't fully address intended subject matter.

**Major** = exceedance of permit limit by  $\geq 301\%$  for Avg. Monthly,  $\geq 601\%$  for Daily Max., exceed numeric WQ standard by  $\geq 601\%$ , 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 -			\$0
6.2.b.4 - Compliance/noncompliance history -			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)	\$12,000		\$12,000
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)		50	(\$25,500)
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		10	(\$5,100)
6.2.b.3 - Cooperation with the Secretary		10	(\$5,100)
6.2.b.5 - Ability to Pay			\$0
<b>Penalty Adjustments</b>			<b>(\$23,670)</b>
<b>Penalty =</b>			<b>\$27,330</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	\$12,000
Permit Application or Modification	
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$12,000</b>
<b>Comments: Avoided cost of 12 tons of black beauty filter media for the sand bed.</b>	