



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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Harold D. Ward, Cabinet Secretary
dep.wv.gov

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

TO: Corporation of Shepherdstown
Mr. Frank Welch,
409 E High Street,
Shepherdstown WV, 25443

DATE: February 4, 2021

ORDER NO.: 8977

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 Corporation of Shepherdstown (hereinafter "Shepherdstown").

FINDINGS OF FACT

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

1. Shepherdstown operates a wastewater treatment plant located in Shepherdstown, Jefferson County, West Virginia. Shepherdstown was reissued WV/NPDES Water Pollution Control Permit No. WV0024775 on March 20, 2013 and October 1, 2018.
2. On January 7, 2019, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility and observed and documented the following violations of the WV/NPDES permit:
 - a. Section C.22 - Shepherdstown failed to submit Inflow and Infiltration (I&I) reports.
 - b. Appendix A.II.1 – Shepherdstown failed to properly operate and maintain the collection system. Specifically, Shepherdstown failed to implement and enforce the pretreatment grease program. As a result of the lack of proper pretreatment, there was a build-up of grease in the main street line, and the Maddex lift station well had grease that originated from restaurants.

Promoting a healthy environment.

As a result of the aforementioned violations, Notice of Violation (NOV) No. w19-19-001-mkk was issued to Shepherdstown.

3. On March 26, 2019, WVDEP personnel conducted a record review and determined the following violations of the WV/NPDES permit:
 - a. Section A – Shepherdstown exceeded its permit parameters.

As a result of the aforementioned violations, NOV No. w19-19-081-mkk was issued to Shepherdstown.

4. On May 9, 2019, WVDEP personnel conducted a review of facility records from the time period of April 1, 2017 through March 31, 2019. During this review, the following violations of the terms and conditions of Shepherdstown's WV/NPDES permit were observed:
 - a. Section C.22 – Shepherdstown failed to submit any I&I reports for the previous eight (8) quarters.
 - b. Section A – Fifteen (15) exceedances of Shepherdstown's permit parameters were observed and documented (Table 1). These exceedances can be further defined as:
 - i. Minor violations- eleven (11)
 - ii. Moderate violations- four (4)

5. On January 22, 2021, a representative of Shepherdstown submitted correspondence to WVDEP, which included the following statements:
 - a. Shepherdstown represented that, on or about February 18, 2020, it began implementing a chemical treatment process to address the aforementioned Total Recoverable Copper exceedances.
 - b. Shepherdstown represented that, in April 2019, it began implementing a liquid enzyme-based treatment process to address grease build-up in the Maddex lift station.

6. On January 23, 2021, WVDEP personnel conducted a review of facility records from the time period of April 1, 2019 through November 30, 2020. During this review, one (1) minor exceedance of pH was observed for the July 2019 sampling period. There were no reported exceedances for any other parameters. In addition, it was observed that recent I&I reports had been submitted in accordance with the requirement outlined in Section C.22 of the WV/NPDES permit. Furthermore, recent inspection reports reflect that the facility was being properly operated and maintained.

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. Shepherdstown shall immediately take all measures to initiate compliance with all terms and conditions of its WV/NPDES permit.
2. Because of Shepherdstown's permit violations, Shepherdstown shall be assessed a civil administrative penalty of thirty-five thousand eight hundred ninety dollars (\$35,890).

Seven thousand one hundred seventy-eight dollars (\$7,178) of the civil administrative penalty shall 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.

The remaining twenty-eight thousand seven hundred twelve dollars (\$28,712) of the civil administrative penalty shall be held in abeyance for a period of eighteen (18) months after the effective date of this Order. Shepherdstown agrees to pay the entire twenty-eight thousand seven hundred twelve dollars (\$28,712) held in abeyance within thirty (30) days of WVDEP's written demand, should Shepherdstown exceed its WV/NPDES permitted Average Monthly or Max Daily effluent limitations for pH or Total Recoverable Copper.

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. Shepherdstown 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, Shepherdstown 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, Shepherdstown 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 Shepherdstown 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, Shepherdstown 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 Shepherdstown becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Shepherdstown 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 Shepherdstown 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 Shepherdstown (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 Shepherdstown 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 Shepherdstown 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 Shepherdstown, its successors and assigns.
7. This Order shall terminate upon Shepherdstown's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

Frank Welch
Frank Welch
Corporation of Shepherdstown

2/19/2021
Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date



Blue Moon restaurant grease trap, full of grease



Maddex lift station well with grease

Table One: Shepherdstown DMR Exceedance Summary

Outlet 001 DMR Exceedances - AVG. MONTHLY - 4/1/17 through 3/31/19						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
11/2017	Total Recoverable Coppe	mg/l	0.0085	0.0086	1%	X	-	-
3/2018	Total Recoverable Coppe	mg/l	0.0085	0.0115	35%	X	-	-
4/2018	Total Recoverable Coppe	mg/l	0.0085	0.0115	35%	X	-	-
5/2018	Total Recoverable Coppe	mg/l	0.0085	0.0231	172%	-	X	-
7/2018	Total Recoverable Coppe	mg/l	0.0085	0.0157	85%	-	X	-
8/2018	Total Recoverable Coppe	mg/l	0.0085	0.0101	19%	X	-	-
2/2019	Total Recoverable Coppe	mg/l	0.0094	0.026	177%	-	X	-

Outlet 001 DMR Exceedances - MAX. Annual - 4/1/17 through 3/31/19						Degree of non-compliance		
Date	Parameter	Units	Permitted max. annual	Reported max. annual	% Exceedance	Min	Mod	Maj
4/30/2018	Total Nitrogen	lbs/yr	6088	7066.57	16%	X	-	-

Outlet 001 DMR Exceedances - pH INSTANTANEOUS. MIN. - 4/1/17 through 3/31/19						Degree of non-compliance		
Date	Parameter	Units	Permitted min. daily	Reported min. daily	% Exceedance	Min	Mod	Maj
10/2017	pH	S.U.	6.5	6.44	8.0%	X		
12/2017	pH	S.U.	6.5	6.4	13.3%	X		
1/2018	pH	S.U.	6.5	6.32	24.0%	X		
12/2018	pH	S.U.	6.5	6.27	30.7%	X		

Outlet 001 DMR Exceedances - MAX. DAILY - 4/1/17 through 3/31/19						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
5/2018	Total Reoverable Coppe	mg/l	0.0184	0.0231	26%	X	-	-
2/2019	Total Reoverable Coppe	mg/l	0.0212	0.026	23%	X	-	-

Outlet S01 DMR Exceedances - MAX. DAILY - 4/1/17 through 3/31/19						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
4/2017	Molybdenum, Dry Weigh	mg/kg	18	65.1	262%	-	X	-

Total	Degree of non-compliance		
	Min	Mod	Maj
	11	4	0

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Corporation of Shepherdstown **Receiving Stream:** _____

Treatment System Design Maximum Flow: 0.667 **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#												
			2b	4a	4bi	4bii									
a)	Amount of Pollutant Released	1 to 3	1	1	1	1									
b)	Toxicity of Pollutant	0 to 3	1	0	1	1									
c)	Sensitivity of the Environment	0 to 3	1	0	1	1									
d)	Length of Time	1 to 3	1	1	1	1									
e)	Actual Exposure and Effects thereon	0 to 3	1	0	1	1									
Average Potential for Harm Factor			1	0.4	1	1	No	No	No	No	No	No	No	No	
2)	Extent of Deviation Factor	Factor Range													
	Degree of Non-Compliance	1 to 3	3	3	1	2									

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.

		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
2b	Minor	Major	\$2,000	1	\$2,000
4a	Minor	Major	\$1,700	8	\$13,600
4bi	Minor	Minor	\$1,000	11	\$11,000
4bii	Minor	Moderate	\$1,500	4	\$6,000
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					\$32,600

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		\$3,260
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			\$0
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$3,290
Penalty =			\$35,890

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.	