



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0495
Fax: (304) 926-0463

Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

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

TO: Corporation of Shepherdstown
Hon. Arthur J. Auxer III, Mayor
PO Box 248
Shepherdstown, WV 25443

DATE: August 30, 2012

ORDER NO.: 7604

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 the Corporation of Shepherdstown (hereinafter "Shepherdstown").

FINDINGS OF FACT

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

1. Shepherdstown operates a waste water treatment plant located in Jefferson County, West Virginia. Shepherdstown was issued WV/NPDES Water Pollution Control Permit No. WV0024775 on June 11, 2008.
2. On June 28, 2011, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Shepherdstown's WV/NPDES permit were observed and documented:
 - a. The permittee allowed discolored water to discharge from the treatment system into the receiving stream, a violation of Appendix A, Section II.1.
 - b. The permittee failed to maintain the clarifiers and contact chambers, a violation of Appendix A, Section II.1.

As a result of the aforementioned violations, Notice of Violation (NOV) No. w11-19-072-203 was issued to Shepherdstown.

3. On December 6, 2011, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Shepherdstown's permit were observed and documented:
 - a. The permittee allowed discolored water to discharge from the treatment system into the receiving stream, a violation of Appendix A, Section II.1.
 - b. The permittee failed to maintain the clarifiers and contact chambers, a violation of Appendix A, Section II.1.

As a result of the aforementioned violations, NOV No. w11-19-125-203 was issued to Shepherdstown.

4. On February 29, 2012, WVDEP personnel conducted a review of facility records from January 2011 through December 2011. During this review, the following violations of the terms and conditions of Shepherdstown's WV/NPDES permit were observed:
 - a. Eighteen (18) exceedances of Shepherdstown's permit parameters were observed and documented (Table One). Each exceedance is a violation of the terms and conditions of Shepherdstown's WV/NPDES permit (Section A). These exceedances can be further defined as:
 - i. Minor violations-6
 - ii. Moderate violations-1
 - iii. Major violations-11

5. On March 8, 2012, WVDEP personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the terms and conditions of Shepherdstown's WV/NPDES permit were observed and documented:
 - a. The permittee allowed discolored water to discharge from the treatment system into the receiving stream, a violation of Appendix A, Section II.1.
 - b. The permittee failed to maintain the clarifiers and contact chambers, a violation of Appendix A, Section II.1.

As a result of the aforementioned violations, NOV No. w12-19-032-203 was issued to Shepherdstown.

6. Shepherdstown has currently started construction to upgrade the current wastewater treatment plant, as outlined within WV/NPDES Permit Modification B.
7. On July 24, 2012, WVDEP personnel and representatives of Shepherdstown 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. Shepherdstown 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, Shepherdstown shall submit for approval a proposed Plan of Corrective Action and schedule, outlining action items and completion dates for how and when Shepherdstown will achieve compliance with all terms and conditions of its WV/NPDES permit. The Plan of Corrective Action shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NE Regional Environmental Enforcement Office
HC63 Box 2545
Romney, WV 26757**

A copy of this plan 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.

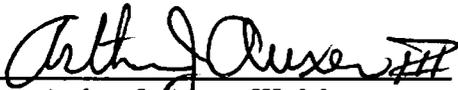
3. Because of Shepherdstown's violations, Shepherdstown shall be assessed a civil administrative penalty of thirty-three thousand eight hundred seventy dollars (\$33,870) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of 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 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 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.



Hon. Arthur J. Auxer III, Mayor
Corporation of Shepherdstown

9-13-2012

Date

Public Notice begin:

Date

Public Notice end:

Date

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

Date

revised September 2011

RECEIVED

OCT 01 2012

ENVIRONMENTAL
ENFORCEMENT

Table One:
Shepherdstown Exceedances

Outlet 001 DMR Exceedances - AVG. MONTHLY - 01/11 through 12/11						Degree of non-compliance		
Date	Parameter	Units	Permitted avg. monthly	Reported avg. monthly	% Exceedance	Min	Mod	Maj
1/11	Fecal	Cnts/100m	200	60000	29900%	-	-	X
3/11	Fecal	Cnts/100m	200	586	193%	-	X	-
4/11	Fecal	Cnts/100m	200	60000	29900%	-	-	X
5/11	Fecal	Cnts/100m	200	60000	29900%	-	-	X
6/11	Fecal	Cnts/100m	200	50000	24900%	-	-	X
10/11	Fecal	Cnts/100m	200	60000	29900%	-	-	X
1/11	Nitrogen	mg/l	18	23.5	31%	X	-	-
2/11	Nitrogen	mg/l	18	21.2	18%	X	-	-
3/11	Nitrogen	mg/l	18	23.2	29%	X	-	-
3/11	Nitrogen	lbs/day	60	73.85	23%	X	-	-

Outlet 001 DMR Exceedances - MAX. DAILY - 01/11 through 12/11						Degree of non-compliance		
Date	Parameter	Units	Permitted max. daily	Reported max. daily	% Exceedance	Min	Mod	Maj
1/11	Fecal	Cnts/100m	400	60000	14900%	-	-	X
3/11	Fecal	Cnts/100m	400	3300	725%	-	-	X
4/11	Fecal	Cnts/100m	400	60000	14900%	-	-	X
5/11	Fecal	Cnts/100m	400	60000	14900%	-	-	X
6/11	Fecal	Cnts/100m	400	50000	12400%	-	-	X
10/11	Fecal	Cnts/100m	400	60000	14900%	-	-	X

Outlet 001 Exceedances - Minimum 85% Removal - AVG. MONTHLY - 01/11 through 12/11						Degree of non-compliance		
Date	Parameter	Units	Permitted Minimum % Removal	Reported % Removal	% Exceedance	Min	Mod	Maj
4/11	BOD%	mg/l	85.0	84.0	1.2%	X	-	-
5/11	BOD%	mg/l	85.0	84	16%	X	-	-

Outlet 001 Totals		Degree of non-compliance		
		Min	Mod	Maj
		6	1	11

**Pictures of Shepherdstown WWTP
Taken on 12/06/11**



Picture 1: Contact chamber with sludge.



Picture 2: Contact chambers with sludge.



Picture 3: Clarifier with sludge/foam.



Picture 4: Discharge to the Potomac River
from contact chamber in Picture 1.

**Pictures of Shepherdstown WWTP
Taken on 06/28/11**



Picture 1: Contact chambers with sludge.



Picture 2: Clarifier with sludge/foam.



Picture 3: Foam in the aeration basin.



Picture 4: Discharge to the Potomac River
from contact chamber in Picture 1.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party:

Corp. of Shepherdstown

Receiving Stream:

Potomac River

Treatment System Design Maximum Flow: 0.4 mgd 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	3b	4ai	4aii	4aiii	5b								
a)	Amount of Pollutant Released	1 to 3	1	1	1	1	1	1								
b)	Toxicity of Pollutant	0 to 3	1	1	1	1	1	1								
c)	Sensitivity of the Environment	0 to 3	1	1	1	1	1	1								
d)	Length of Time	1 to 3	1	2	1	1	1	3								
e)	Actual Exposure and Effects thereon	0 to 3	1	1	1	1	1	1								
Average Potential for Harm Factor			1	1.2	1	1	1	1.4	No							
2)	Extent of Deviation Factor	Factor Range														
	Degree of Non-Compliance	1 to 3	2	2	1	2	3	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.

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)			\$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	(\$3,760)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			(\$3,730)
Penalty =			\$33,870

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:	