

TOWN OF BATH COUNCIL MEETING

March 5, 2024

1. Call to ORDER: @ 5:30pm by Mayor.
2. ROLL CALL: Scott Merki (X) Susan Webster (X) Elizabeth Skinner (X) Greg Schene (X) Rebecca MacLeod (X) Mary Lynn Hickey (X) Tom Hall (A) Quorum present.
3. REVIEW OF MINUTES: Minutes of the Regular Meeting of February 21, 2024 were approved by Common Consent.
4. PERSONS BEFORE COUNCIL: None at this time.
5. COMMUNICATION FROM MAYOR: The Mayor made clear that the Town of Bath is not producing a food truck event. It appears that some vendors were given that impression and were calling the Town office for information. The Community Garden group is meeting on March 12 at 2pm.

COMMITTEE AND BOARD REPORTS

1. BATH DEVELOPMENT AUTHORITY (BDA): Next meeting is March 6. President Lisa Stine was present to talk about the group's activities including new website development.
2. PARKS & REC: The next meeting is March 20. Bath appointee Ashley Moss was in attendance to describe current activities including Bidy Buddy Basketball and field preparations for the start of the Little League season.
3. PLANNING COMMISSION (PC): The next meeting is March 14.
4. RAIL/TRAIL (NBRT): The next meeting is February 28. Co-Chair Pete Brown has submitted the project progress report (attached) and was present for explanation. Councilwoman MacLeod expanded on the written report progress details regarding Parcel 1A landscaping and remediation ongoing plans and work. An event is being planned for this phase of the Depot lot development in conjunction with Arbor Day. Bath has received the Draft Consent Order #10251 (attached) from the WV DEP explaining in detail the violation that the Town has been charged with since Bath is the sponsoring agent for the Berkeley Springs State Park project. The Town has replied with a letter (attached) requesting a meeting with the WV DEP to better understand the situation.
5. STREETSCAPE: The progress report (attached) has been submitted by Co-Chair Pete Brown and was present with further details. The next meeting is March 21.
6. TRAIN DEPOT: The next meeting is March 21 at 4pm at Town Hall. Chairwoman Webster made it known that Jim Bailey has agreed to Co-Chair this committee. The committee is looking into grant and activity opportunities. An application for use of the Depot was submitted by the Morgan Arts Council, but was rescinded.
7. LANDMARK COMMISSION (HLC): Long time HLC volunteer Melissa Schod submitted an application to be appointed to this Board.
MOTION: To appoint Melissa Schod to the Bath Historic Landmark Commission- Schene/Skinner- Carried

HLC members plan to attend Certified Local Government training sponsored by the WV SHPO in April.

8. **CLERK/RECORDER REPORT:** Clerk Corrick presented a request for revision to the Bath approved budget for FY 2024 with accompanying Resolution 2024-03-01 (attached) for approval.

MOTION: To approve Resolution 2024-03-01- Webster/MacLeod

The required poll vote was taken with the resolution passing unanimously.

9. **FINANCE:** Chairwoman Webster delivered the following bills for approval:

(a) Town of Bath \$26,867.57- Motion to approve: Webster/Schene - Carried

(b) BSWW \$25,472.14 – Motion to approve: Webster/Skinner- Carried

(c) Tree Board \$5,600.00- Motion to approve: Webster/MacLeod- Carried

(d) Streetscape \$25,000.00- Motion to approve: Webster/Schene

Chairwoman Webster reminded all of the FY 2025 Budget Preparation schedule of meetings (attached).

10. **TREE BOARD:** Councilwoman MacLeod described recent work of this Board in developing a three-year tree plan in Bath using the Tree Survey as guide, the Demonstration City Grant progress and the Baltimore Alley tree situation.
11. **GRANT:** The next meeting is March 11 at 4:30pm. Chairwoman Hickey has submitted the application for AARP Safe Street grant funding for two Streetscape street lighting poles at the Depot. WV SHPO grant opportunities for private property historic revitalization is also on the committee work agenda.
12. **PUBLIC SAFETY:** The next meeting is March 13. No report at this time.
13. **CEMETERY:** Chairwoman Skinner reported that the Foxglove Garden Club has requested the ability to use the historic yellow bricks that had been used on Fairfax Street to construct walk ways in the Town's historic German Cemetery. This request honors the requirements of WV SHPO for using the bricks.
- MOTION:** To approve the use of the Fairfax Street yellow bricks by Foxglove Garden Club to create walkways in the historic German Cemetery- Skinner/Hall- Carried
- Establishing an arboretum on the five unused acres of Greenway Cemetery is being considered.
14. **PUBLIC WORKS:** Next meeting is April 5. Chairwoman MacLeod reported that the committee is reviewing sidewalks for improvement prioritization. Curb repainting is being planned. There are additional repairs needed for the Freightliner. The cost of equipment repairs is onerous and assistance with budgeting is necessary.
15. **ORDINANCE:** The next meeting is March 14. Chairman Schene informed Council that the Committee is reviewing the BSWW's tariff in regard to rates, capacity fees and capital improvement fees for new construction or new customers.
16. **BSWW:** The next meeting is March 6. Chairman Hall reported that the main water line break experienced by BSWW last week was due to lack of communication from the construction crew of Potomac Edison on Rt. 522. The BSWW was not notified nor onsite when this occurred. Employees of the company were commended for their hard work in getting the line repaired under difficult conditions. More service interruption is to be

expected with the Rt. 522 bypass construction.

The Mayor, members of Council, BSWW Superintendent Mayhew, the Morgan County Commission and Warm Springs Public Service District met on this day to discuss the Rt. 522 Water Line Extension Project in hopes of answering questions and resolving misunderstandings. Chairman Hall expressed that he believed the clarifications were helpful.

The BSWW is reviewing applications for employment for the office and distribution.

17. PUBLIC COMMENT: Councilwoman MacLeod thanked Councilman Schene for his work on the Town budgeting. The Town has kept rates low for a long time and must consider making decisions to increase rates to keep up with current conditions.

18. MOTION TO ADJOURN: Approved by Common Consent.

Attest:

Mayor Scott E. Mac

Recorder Spurb



west virginia department of environmental protection

Environmental Enforcement
601 57th Street SE
Charleston, WV 25304
Telephone: (304) 926-0470 Fax: (304) 926-0488

Harold D. Ward, Cabinet Secretary
dep.wv.gov

February 22, 2024

Town of Bath
Scott Merki, Mayor
271 Wilkes Street
Berkeley Springs, WV 25411

CERTIFIED RETURN RECEIPT REQUESTED

9489 0090 0027 6573 8292 42

Dear Mayor Merki:

Enclosed is DRAFT CONSENT ORDER NUMBER 10251. This action is based upon the investigation and recommendation of the West Virginia Department of Environmental Protection's (WVDEP) Environmental Enforcement unit in response to the Town of Bath violating Chapter 22, Article 11 of the WV State Code at Berkeley Springs State Park in Berkeley Springs, Morgan County, West Virginia. This Draft Consent Order is being offered pursuant to West Virginia State Code 22-11-22(b).

Please review the terms and conditions of this Draft Consent Order and respond within ten (10) days of your receipt. You may accept these terms and conditions by signing and returning the original Consent Order to me at WVDEP, EE, 601 57th Street SE, Charleston, WV 25304. If you wish to meet and discuss this administrative proceeding, respond to David C. Simmons, Assistant Chief Inspector, at the above address or call (304) 926-0470. Should you request a meeting, it will be scheduled within thirty (30) days of your receipt of the Draft Order, if possible.

Upon conclusion of this proceeding and your reaching agreement with the WVDEP on a resolution of the violation(s) contained in the Consent Order, the Consent Order will be subject to the public notice and comment requirements set forth in 47CSR1-7.1. This notice will identify the responsible party, the specific enforcement action to be taken, and the name and address where information on the proposed settlement can be obtained. The WVDEP will consider all comments received during the thirty (30) day comment period and the Consent Order may be subject to change. Should the proposed settlement be modified after the comment period, you have the option of choosing not to enter into the Consent Order.

Pursuant to 47CSR1-6.2, there are provisions to reduce the proposed civil penalty assessment for good faith, cooperation with the Secretary, ability to pay a civil penalty and other factors deemed relevant. Should you desire to pursue these provisions, you should be prepared

Promoting a healthy environment.

to present all necessary supportive information and/or documentation at the scheduled meeting. The WVDEP may request additional information at, or after, the scheduled meeting related to any of the factors considered in the penalty determination whether related to increasing or decreasing the penalty. Also, 47CSR1-6.2 requires the recovery of economic benefit derived from non-compliance. Therefore, you should be prepared to provide all necessary information and/or documentation to address this matter.

Failure to respond to this correspondence as required shall be considered as your refusal to participate in this process. Should you decline to participate, fail to reply, or fail to resolve the matter by consent, this offer will be withdrawn, and alternative enforcement action will be pursued.

Sincerely,



Brad Wright
Chief Inspector

Enclosure

- cc: Harold D. Ward, Cabinet Secretary, WVDEP (via e-mail)
Scott G. Mandirola, Deputy Secretary for External Affairs, WVDEP (via e-mail)
Jeremy W. Bandy, Director, DWWM (via e-mail)
Yogesh Patel, Assistant Director, DWWM/Permits (via e-mail)
David C. Simmons, Assistant Chief Inspector, EE (via e-mail)
Laura McGee, Environmental Resources Program Manager, EE (via e-mail)
Cindy Blugerman, Environmental Resources Specialist, EE (via e-mail)
Amaris Elliott, Environmental Resources Associate, EE (via e-mail)
Robin Dolly, Environmental Inspector Supervisor, EE/WW (via e-mail)
Katelyn Crispino, Environmental Inspector, EE/WW (via e-mail)
Shyrel Moellendick, MSSS, EE (via e-mail)
Allison Gieda, US EPA, Region III (via e-mail)



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Phone: (304) 926-0470
Fax: (304) 926-0488

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: The Town of Bath
Scott Merki, Mayor
271 Wilkes Street
Berkeley Springs, WV 25411

Date: February 22, 2024

Order No: 10251

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 the Town of Bath.

FINDINGS OF FACT

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

1. The Town of Bath conducted a project to repair a stone wall in Warm Springs Run, located in Berkeley Springs State Park, Morgan County, West Virginia. On January 20, 2023, the United States Army Corps of Engineers (USACE) authorized the Town of Bath to conduct the project under the Nationwide Permit (LRP-2022-0544).
2. On October 27, 2023, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the site in response to a complaint. During the inspection, WVDEP personnel noted that the project work area was not dry, and the water in the work area was not being pumped out to a dewatering device. Furthermore, compost filter sock was not being properly utilized for erosion and sediment control, contrary to the requirement outlined in the aforementioned USACE authorization. In addition, the following violations were observed and documented:
 - a. 47CSR2 Section 3.2.a - The Town of Bath caused conditions not allowable by creating distinctly visible settleable solids in waters of the State. Specifically, sediment from the project was allowed to escape the barrier which had been Promoting a healthy environment.

erected to redirect Warm Springs Run around the work area. At the end of the temporary concrete barrier was an opening which allowed sediment from the work area to flow into Warm Springs Run.

- b. 47CSR11 Section 2.2.a - The Town of Bath failed to provide immediate notification of the discharge of pollutants into waters of the State. Specifically, the Town of Bath failed to report the sediment spill into Warm Springs Run.

As a result of the aforementioned violations, Notice of Violation (NOV) No. W23-33-062-KEC was issued to the Town of Bath.

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. The Town of Bath shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, The Town of Bath shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when The Town of Bath will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to Order No. 10251. 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 The Town of Bath's violations, The Town of Bath shall be assessed a civil administrative penalty of four thousand one hundred dollars (\$4,100) 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 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. The Town of Bath hereby waives its right to appeal this Order under the provisions of West Virginia State Code 22-11-21. Under this Order, The Town of Bath 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, The Town of Bath 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 The Town of Bath 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, The Town of Bath 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 The Town of Bath becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and The Town of Bath 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 The Town of Bath 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 The Town of Bath (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 The Town of Bath 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 The Town of Bath 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 The Town of Bath, its successors and assigns.

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

Scott Merki, Mayor
The Town of Bath

Date

Public Notice begin:

Date

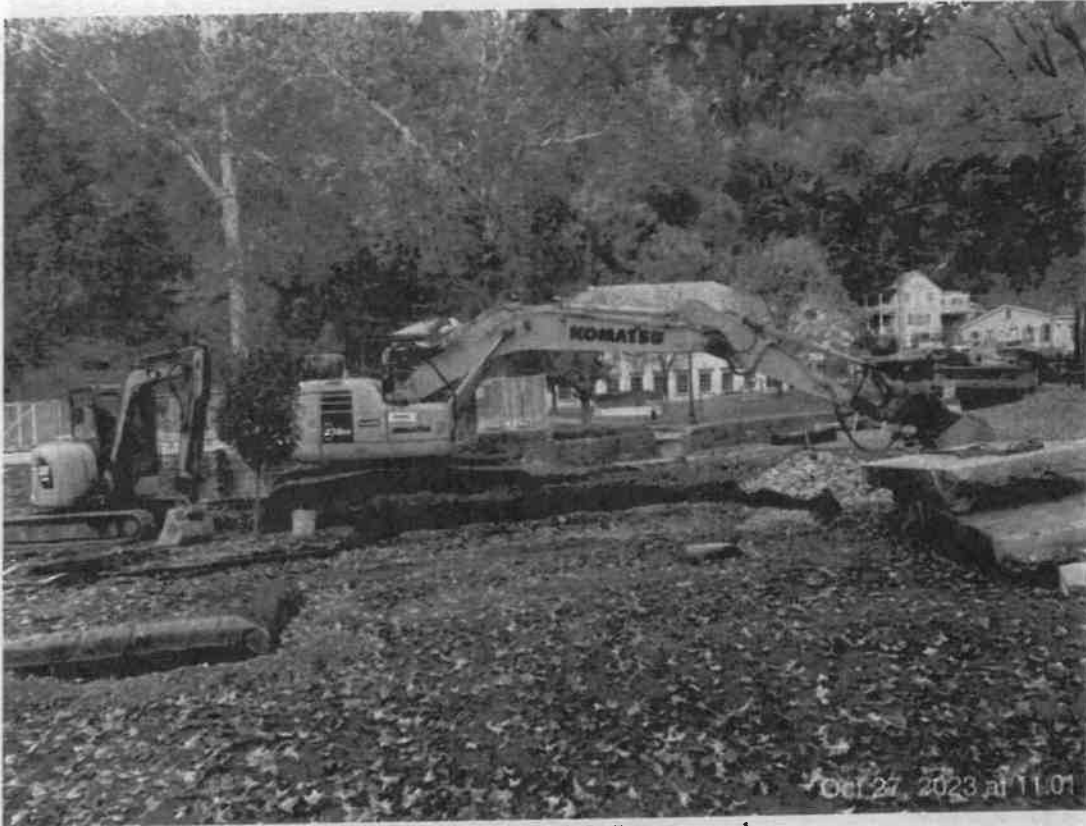
Public Notice end:

Date

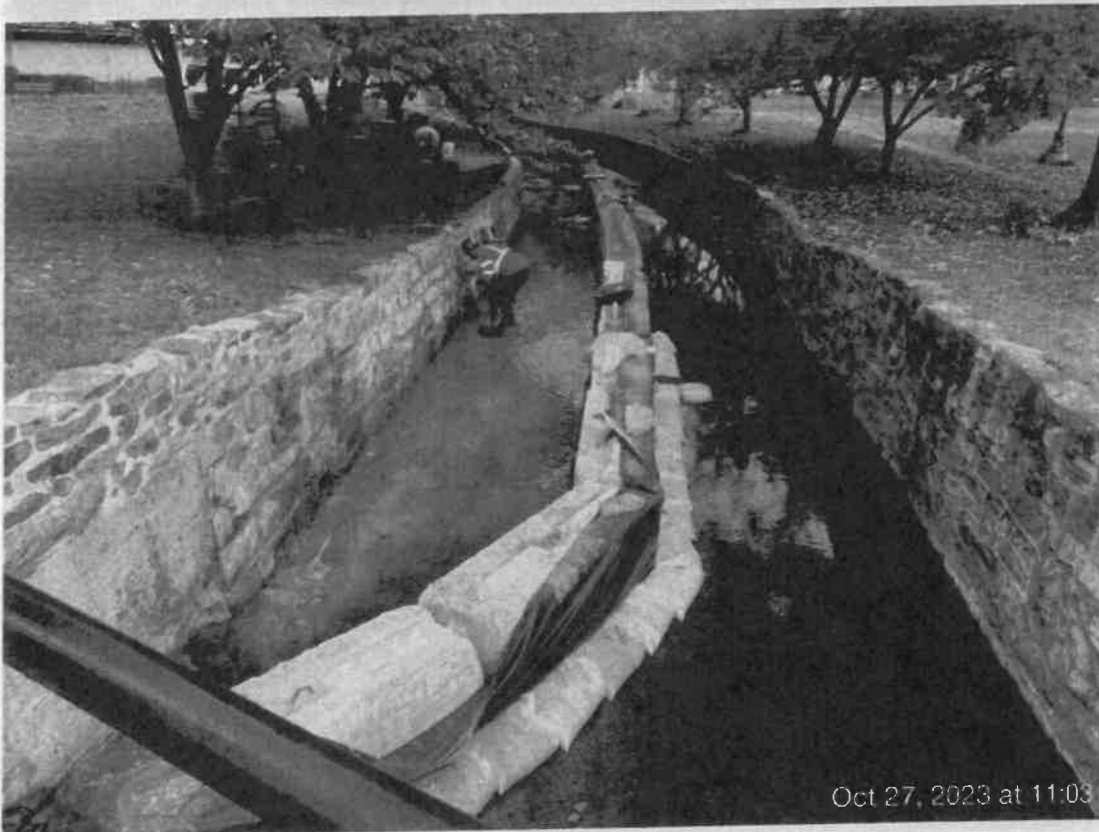
Jeremy W. Bandy, Director
Division of Water and Waste Management

Date

Town of Bath Photo Log



10/27/23 at 11:01AM. Stream work.



10/27/23 at 11:03AM. Workers were in stream with a barrier.

Town of Bath Photo Log



10/27/23 at 11:18AM. An opening at the end of the barrier allowed sediment to flow into the stream.

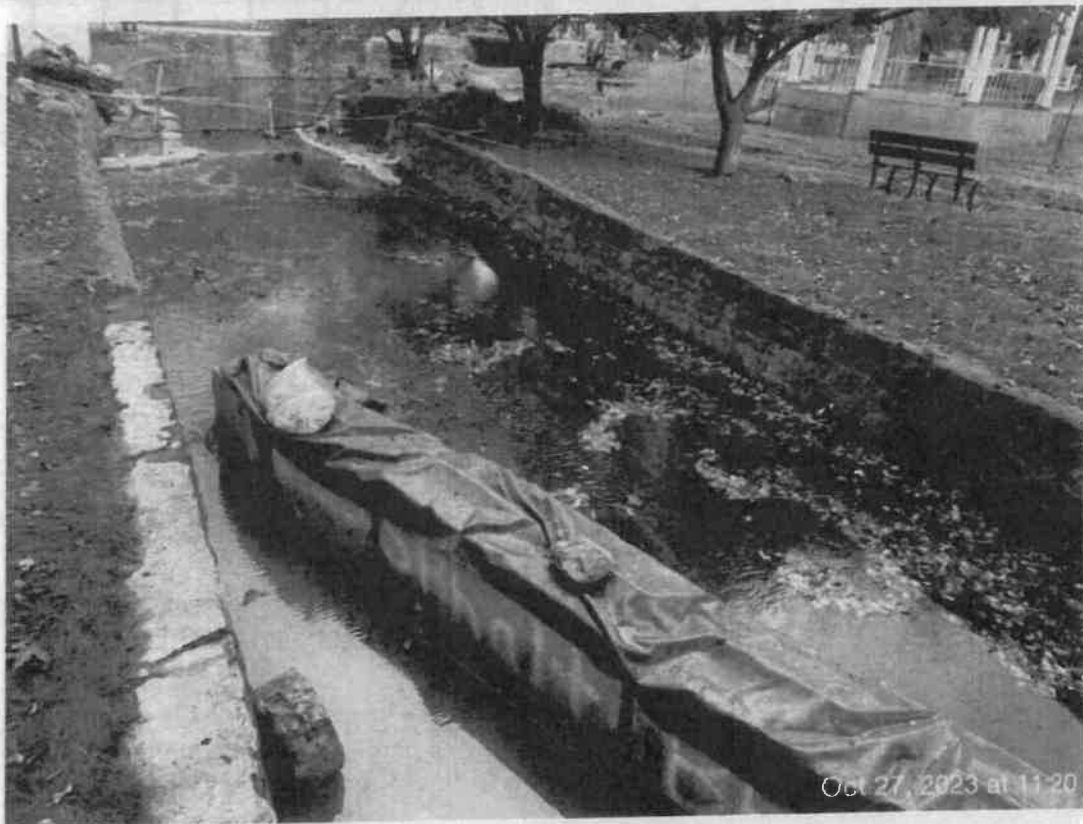


10/27/23 at 11:19AM. Sediment was flowing from construction into Warm Springs Run.

Town of Bath Photo Log



10/27/23 at 11:19AM. Sediment was discharging into Warm Springs Run.



10/27/23 at 11:20AM. Sediment was discharging into Warm Springs Run.

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Town of Bath **Receiving Stream:** Warm Springs

Treatment System Design Maximum Flow: N/A 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 | 0 | | | | | | | | | | |
| c) | Sensitivity of the Environment | 0 to 3 | 1 | 0 | | | | | | | | | | |
| d) | Length of Time | 1 to 3 | 1 | 1 | | | | | | | | | | |
| e) | Actual Exposure and Effects thereon | 0 to 3 | 1 | 0 | | | | | | | | | | |
| Average Potential for Harm Factor | | | 1 | 0.4 | 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.

| | | Extent of Deviation from Requirement | | |
|------------------------------------|----------|--------------------------------------|--------------------|--------------------|
| | | Major | Moderate | Minor |
| Potential for Harm to Human Health | Major | \$8,000 to | \$6,000 to \$8,000 | \$5,000 to \$6,000 |
| | Moderate | \$4,000 to | \$3,000 to \$4,000 | \$2,000 to \$3,000 |
| | Minor | \$1,500 to | \$1,000 to \$1,500 | Up to \$1,000 |

| FOF # | Potential for Harm | Extent of Deviation | Penalty | Multiple Factor | Base Penalty |
|---------------------------|--------------------|---------------------|---------|-----------------|----------------|
| 2a | Minor | Major | \$2,000 | 1 | \$2,000 |
| 2b | Minor | Major | \$1,700 | 1 | \$1,700 |
| 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 |
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| 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 | | | | | \$3,700 |

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 |
|------------------------------------|-------------|
| < 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 |
|--|------------|------------|----------------|
| 6.2.b.1 - Willfulness and/or negligence - | 10 | | \$370 |
| 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 | | | \$400 |
| Penalty = | | | \$4,100 |

| 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. | |

Mayor
Scott Merki



Council Members
Tom Hall
Mary Lynn Hickey
Rebecca MacLeod
Greg Schene
Elizabeth Skinner

Recorder
Susan J. Webster

Town of Bath

271 Wilkes Street, Berkeley Springs, WV 25411
Phone 304-258-1102 Fax 304-258-2638

Mr. David C. Simmons
Assistant Chief Inspector
Environmental Enforcement
601 57th Street SE
Charleston, WV 25304

March 5, 2024

Subject: Meeting to Discuss Draft Consent Order Number 10251

Mr. Simmons,

Your Draft Consent Order #10251 was received in the Town of Bath on February 29, 2024. Upon review of the Draft, I realized that the organizations and conditions surrounding the original Notice of Violation (W23-33-062-KEC) do not seem to be recognized in the Draft.

As a result, I am requesting to meet with you and discuss the background and basis for the Draft Consent Order. We will include actions proposed by the Town and WV-DOH to prevent a similar situation from occurring in the future. This should lead to a final Consent Order that will be acceptable to you, the WV-DOH and the Town of Bath. I plan to invite representatives of the WV-DOH organization responsible for the Contact and the management of the Construction in the Berkeley Springs State Park to that meeting.

My point of contact for this meeting is Town Council member Ms. Rebecca MacLeod. She can be reached at 304-268-5664 or at e-mail pendle35@gmail.com.

Respectfully;

Scott Merki, Mayor, Town of Bath, WV

Copy to:
Ryan Arnold
West Virginia Division of Highways District Five Headquarters
RR 50, Burlington, WV 26710
ryan.e.arnold@wv.gov

Status of Streetscape, State Park and NBRT Projects for Town Council March 4, 2024

STREETSCAPE

Phase V: Design & Construction

- Target for the Phase V is a DOH solicitation in Bid-X for a May 7th Letting (bid opening). This can lead to Construction completion by the end of September; before Apple Butter Festival.
- Files for Plans, Specifications and Estimate (PS&E) package of drawings and cost estimate were reviewed on Feb 29th – with comments sent to Thrasher. Finals went to DOH on March 4th. This begins the final DOH review and some routine edits and fixes may be needed.
- Thrasher invoiced (\$25,000) for completion of the 90% design milestone. Sharron sent the Invoice and payment check (copy) to DOH Charleston for reimbursement.
- For Streetscape Committee; provided Pricing Models for Streetscape Lighting installation and Streetscape Sidewalk installation outside of the regular TA Grant process and DOH management.
- **TA Grant tentative schedules:** For the 2023 Phase VI Design Grant – Award notice is likely within next 30-45 days. Applications for 2024 TA Grants may open shortly after 2023 Award Notices. The Town is “expected” to apply for a TA Construction Grant for Phase VI.
- If the Town is awarded the Phase VI Design Grant, we are prepared to issue and fund our 20% share of the Task Order to Thrasher. Town and DOH must agree and process a Funding Agreement for this design. Phase VI focus is on Congress St between North Washington & Mercer and up to the end of Green Street.

Berkeley Springs State Park Project

Current Status

- Final DOH Inspection completed on Feb 6th. I have the 22 Item DOH Punch-List now.
- Received (2-29-24) DRAFT Consent Order #10251 from DEP regarding DEP Violation Notice dated 10-27-2023. Will discuss next steps at Town Council meeting 3-5-24

NBRT

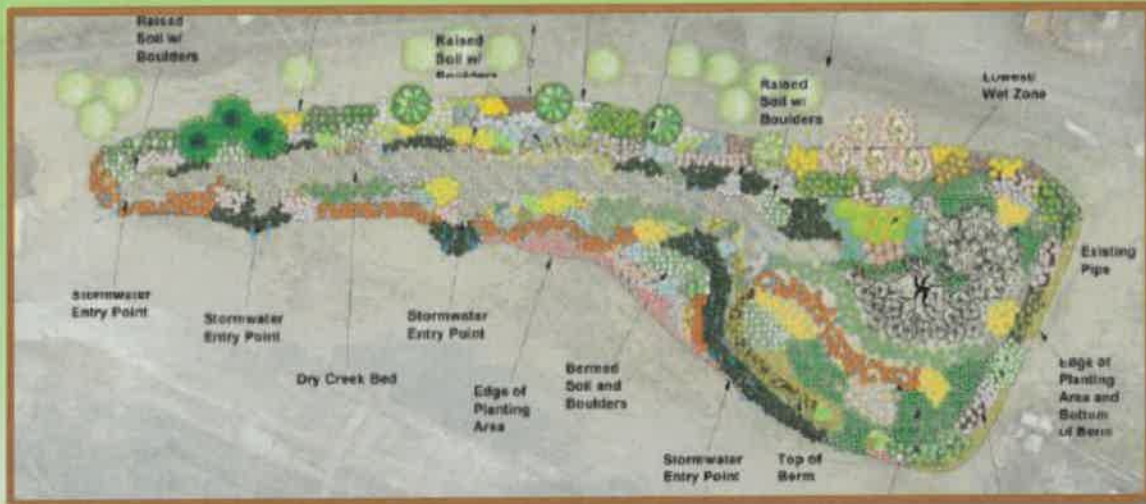
Update from a DOH Meeting on Feb 28th – This was sent to Task Force members

This looks like the “Official” path forward.

- Basically, Cenforce (the DOH’s Central Force) will do the construction.
- Gary Graley (DOH Engineering) will end up with between 4 and 6 bridge manufacturers and will package up the information and get with Tommy Collins (DOH Procurement)
- Gary also has some pricing on the bridge manufacturers doing some abutment design if needed.
- Plans appear to be for a 10 foot wide bridge
- The Budget will stay the same: \$1.6 million.
- DOH needs to also work out the purchasing of the bridges and materials..
- CenForce has 5 projects that are currently scheduled ahead of the NBRT project.
- Right now we don’t have any issues with CenForce taking over. They’ve been great to work with.
- Karen Allen will put together a list of the expiration dates of the permits
- Further meetings include the bridge plans / trail plans / purchasing procedures
- DOH will review Parcel 1A and any remediation issues (there is great detail in the original solicitation package for the bids)
- DOH - Identify who would advertise and make purchases for CenForce
- Possible future Site Visit

Parcel 1B – Storm Water Management: See Landscaping Plan next page

Pete Brown
571-213-3687



**BERKELEY SPRINGS DEPOT
NATURAL STORMWATER
CONTROL
FEATRURING RESTORATION
LANDSCAPING**

Plans are being made for volunteer days
 Tree and Shrub Planting - April 27
 Indiangrass collection and Planting Early May
 Bed Plantings - May through June

| Berkeley Springs Depot Design Species List | | | | | |
|--|----------|------------------------|----------|------------------------|----------|
| Common Name | Quantity | Common Name | Quantity | Common Name | Quantity |
| Cherokee Sedge | 291 | Heath Aster | 24 | Butterfly Weed | 52 |
| Ohio Spiderwort | 259 | Little Bluestem | 22 | Blazing Star | 44 |
| Woods Sedge | 131 | Grey Coneflower | 20 | Black Eyed Susan | 42 |
| Robin's Fleabane | 129 | Wild Quinine | 19 | Obedient Plant | 36 |
| Roundleaf Ragwort | 121 | Eastern Beebalm | 18 | Wild Bergamot | 31 |
| Virginia Mountain Mint | 99 | Sweet Coneflower | 17 | Stiff Goldenrod | 30 |
| Purple Lyreleaf Sage | 91 | Swamp Milkweed | 17 | Threadleaf Blue Star | 10 |
| Cape Breeze Switchgrass | 50 | Aromatic Aster | 15 | Rattlesnake Master | 10 |
| Purple Coneflower | 80 | Blue False Indigo | 13 | Giant Ironweed | 9 |
| Purple Prairie Clover | 69 | Mistflower | 14 | White Penstemon | 7 |
| Calico Aster | 62 | Virginia Curver's Root | 13 | Lavender Hyssop | 6 |
| Short-toothed Mnt Mint | 56 | Sweet Joe Pye Weed | 11 | North Wind Switchgrass | 6 |
| Fireworks Goldenrod | 53 | Prairie Dropseed | 10 | Big Bluestem | 4 |

BUDGET PREPARATION SCHEDULE

FY YEAR 25

ALL MEETINGS WILL BE HELD AT TOWN HALL
271 WILKES STREET, BERKELEY SPRINGS, WV 25411

- Hotel/Motel Application Review - March 01, 2024 - 1pm
- Revenue and Public Works - March 11, 2024 - 1pm ✓
- Public Safety - March 13, 2024 - 1pm ✓
- Overview - March 18, 2024 - 1pm ✓

*Check
on call
Haley*

RESOLUTION 2024-03-01

At a regular session of the municipal council, held March 5, 2024, the following order was made and entered:

SUBJECT: The revision of the Levy Estimate (Budget) of the Town of Bath. The following resolution was offered:

RESOLVED: That subject to approval of the State Auditor as ex officio chief inspector of public offices the municipal council does hereby direct the budget be revised PRIOR TO THE EXPENDITURE OR OBLIGATION OF FUNDS FOR WHICH NO APPROPRIATION OR INSUFFICIENT APPROPRIATION CURRENTLY EXISTS, as shown on budget revision number 2 for fund 1 a copy of which is entered as part of this record.

The adoption of the foregoing resolution having been moved by Susan, and duly seconded by Rebecca the vote thereon was as follows:

| | |
|-------------------|--|
| Scott Merki | <input checked="" type="radio"/> Yes or No |
| Susan Webster | <input checked="" type="radio"/> Yes or No |
| Elizabeth Skinner | <input checked="" type="radio"/> Yes or No |
| Mary Lynn Hickey | <input checked="" type="radio"/> Yes or No |
| Rebecca MacLeod | <input checked="" type="radio"/> Yes or No |
| Greg Schene | <input checked="" type="radio"/> Yes or No |
| Tom Hall | <input checked="" type="radio"/> Yes or No |

WHEREUPON, The Town of Bath, declared said resolution duly adopted, and it is therefore ADJUDGED and ORDERED that said resolution be, and the same is, hereby adopted as so stated above, and the Town Clerk Sharron Corrick is authorized to fix his signature on the attached "Request for Revision to Approved Budget" to be sent to the State Auditor for approval.

Ora Ash, Deputy State Auditor
 West Virginia State Auditor's Office
 200 West Main Street
 Clarksburg, WV 26301
 Phone: 627-2415 ext. 5114
 Fax: 304-340-5090
 Email: lgs@wvsao.gov

REQUEST FOR REVISION TO APPROVED BUDGET

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

CONTROL NUMBER
 Fiscal Year Ending: **2024**
 Fund: **1**
 Revision Number: **2**
 Pages: **1 of 1**

Town of Bath
 GOVERNMENT ENTITY

271 Wilkes St
 STREET OR PO BOX

Municipality
 Government Type

Berkeley Springs WV 25411
 CITY ZIP CODE

Person To Contact Regarding Request:
 Name: **Sharron Corrick**
 Phone: **304-258-1102**
 Fax: **304-258-3638**
 Email: **Townofbath@wvdsi.net**

REVENUES: (net each acct.)

| ACCOUNT NUMBER | ACCOUNT DESCRIPTION | PREVIOUSLY APPROVED AMOUNT | (INCREASE) | (DECREASE) | REVISED AMOUNT |
|---|---------------------------------|----------------------------|---------------|------------|----------------|
| 303 | Gas and Oil Severance Tax | 4,500 | 3,200 | | 7,700 |
| 306 | Wine & Liquor Tax | 26,000 | 6,600 | | 32,600 |
| 325 | Licenses | 10,500 | 400 | | 10,900 |
| 335 | Private Liquor Club Fee | 3,000 | | 750 | 2,250 |
| 345 | Rents/Royalties and Concessions | 9,600 | 24,400 | | 34,000 |
| 304 | Excise Tax on Utilities | 68,562 | | 20,000 | 48,562 |
| NET INCREASE/(DECREASE) Revenues (ALL PAGES) | | | 13,850 | | |

Explanation for Account # 378, Municipal Specific:
Explanation for Account # 369, Contributions from Other Funds:

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

| ACCOUNT NUMBER | ACCOUNT DESCRIPTION | PREVIOUSLY APPROVED AMOUNT | (INCREASE) | (DECREASE) | REVISED AMOUNT |
|---|---------------------|----------------------------|---------------|------------|----------------|
| 411 | Recorder's Office | 130 | | 39 | 91 |
| 438 | Elections | | 32 | | 32 |
| 800 | Garbage Department | 192,740 | 13,857 | | 206,597 |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| | #N/A | | | | |
| NET INCREASE/(DECREASE) Expenditures | | | 13,850 | | |

APPROVED BY THE STATE AUDITOR
 BY: **Deputy State Auditor, Local Government Services Division** Date

AUTHORIZED SIGNATURE
 OF ENTITY

APPROVAL
 DATE

TOWN OF BATH
EXPENDITURES AND ENCUMBRANCES
YEAR: 2024

BATCH DATE 3/5/2024 2024

| Chart of account | | | AMOUNT | DESCRIPTION | Budget Balance |
|------------------|----------------|----------------|---------------------|-------------------------|----------------|
| 400-615-800 | POTOMAC EDISON | | \$195.82 | BOOSTER STATION | |
| 400-615-800 | POTOMAC EDISON | | \$12.73 | GREENGATE | |
| 400-615-800 | POTOMAC EDISON | | \$3,271.17 | MASTER | |
| 400-635-800 | WVDHHR | | \$100.00 | TESTING | |
| | T.O.B | | \$2,500.00 | RENT/ADMIN | |
| 400-675-200 | WSPSD | \$ | 56.11 | SEWER 1/18-2/15/24 | |
| 400-635-800 | PACE | | \$19.90 | WATER SAMPLES | |
| 400-125-300 | CLOSE CPA | \$ | 475.00 | ACCT & PAYROLL MAR 24 | |
| 400-675-200 | CORE & MAIN | | \$7,080.00 | METERS AND ANT | |
| 400-675-600 | U.S.P.S | 27800 | \$570.43 | JAN-FEB BILLING | |
| | T.O.B | | \$3,189.92 | PEIA INS | |
| | T.O.B | | \$3,050.00 | STORAGE AND GROUND RENT | |
| | ARNEDT MCBEE | | \$250.00 | RSB7006040 BOND | |
| | T.O.B | | \$412.36 | 2% UTILITY TAX FEB 24 | |
| 400-675-200 | MIKE THE COMP | | \$95.00 | KASPERSKY RICK COMP | |
| | MORGAN MESS | | \$136.00 | EMPLOYMENT ADS | |
| | MORGAN MESS | | \$259.20 | 522 EXT AD FOR LEGAL | |
| | WV CORP | | \$3,063.50 | INS QRTLY WV BE 797-24 | |
| | T.O.B | | \$735.00 | AUDIT | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | Totals: | \$ 25,472.14 | | |

