

**CIVIL - NON-DOMESTIC CASE INFORMATION REPORT****DIRECTIONS**

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a).

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS A PLEADING

FORM FILED BY: <input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT		CASE NUMBER _____
CASE NAME: Mayor and City Council of Baltimore Plaintiff		vs. Maryland Department of Environment Defendant
PARTY'S NAME: Mayor and City Council of Baltimore		PHONE: 410-396-3940
PARTY'S ADDRESS: 100 N. Holliday Street, Baltimore MD 21202		
PARTY'S E-MAIL: stephen.salsbury@baltimorecity.gov		
If represented by an attorney:		
PARTY'S ATTORNEY'S NAME: Stephen Salsbury		PHONE: 410-396-3940
PARTY'S ATTORNEY'S ADDRESS: 100 N. Holliday Street, Baltimore MD 21202		
PARTY'S ATTORNEY'S E-MAIL: stephen.salsbury@baltimorecity.gov		
JURY DEMAND? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
RELATED CASE PENDING? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, Case #(s), if known: Case No. 24-C-22-000386		
ANTICIPATED LENGTH OF TRIAL?: _____ hours _____ days		

PLEADING TYPE

New Case: ☐ Original ☒ Administrative Appeal ☐ Appeal
Existing Case: ☐ Post-Judgment ☐ Amendment

If filing in an existing case, skip Case Category/ Subcategory section - go to Relief section.

IF NEW CASE: CASE CATEGORY/SUBCATEGORY (Check one box.)**TORTS**

- ☐ Asbestos
- ☐ Assault and Battery
- ☐ Business and Commercial
- ☐ Conspiracy
- ☐ Conversion
- ☐ Defamation
- ☐ False Arrest/Imprisonment
- ☐ Fraud
- ☐ Lead Paint - DOB of Youngest Plt: _____
- ☐ Loss of Consortium
- ☐ Malicious Prosecution
- ☐ Malpractice-Medical
- ☐ Malpractice-Professional
- ☐ Misrepresentation
- ☐ Motor Tort
- ☐ Negligence
- ☐ Nuisance
- ☐ Premises Liability
- ☐ Product Liability
- ☐ Specific Performance
- ☐ Toxic Tort
- ☐ Trespass
- ☐ Wrongful Death

CONTRACT

- ☐ Asbestos
- ☐ Breach
- ☐ Business and Commercial
- ☐ Confessed Judgment
- (Cont'd)
- ☐ Construction
- ☐ Debt
- ☐ Fraud

☐ Government

- ☐ Insurance
- ☐ Product Liability

PROPERTY

- ☐ Adverse Possession
- ☐ Breach of Lease
- ☐ Detinue
- ☐ Distress/Distrain
- ☐ Ejectment
- ☐ Forcible Entry/Detainer
- ☐ Foreclosure
- ☐ Commercial
- ☐ Residential
- ☐ Currency or Vehicle
- ☐ Deed of Trust
- ☐ Land Installments
- ☐ Lien
- ☐ Mortgage
- ☐ Right of Redemption
- ☐ Statement Condo
- ☐ Forfeiture of Property / Personal Item
- ☐ Fraudulent Conveyance
- ☐ Landlord-Tenant
- ☐ Lis Pendens
- ☐ Mechanic's Lien
- ☐ Ownership
- ☐ Partition/Sale in Lieu
- ☐ Quiet Title
- ☐ Rent Escrow
- ☐ Return of Seized Property
- ☐ Right of Redemption
- ☐ Tenant Holding Over

PUBLIC LAW

- ☐ Attorney Grievance
- ☐ Bond Forfeiture Remission
- ☐ Civil Rights
- ☐ County/Mncpl Code/Ord
- ☐ Election Law
- ☐ Eminent Domain/Condemn.
- ☐ Environment
- ☐ Error Coram Nobis
- ☐ Habeas Corpus
- ☐ Mandamus
- ☐ Prisoner Rights
- ☐ Public Info. Act Records
- ☐ Quarantine/Isolation
- ☐ Writ of Certiorari

EMPLOYMENT

- ☐ ADA
- ☐ Conspiracy
- ☐ EEO/HR
- ☐ FLSA
- ☐ FMLA
- ☐ Workers' Compensation
- ☐ Wrongful Termination

INDEPENDENT PROCEEDINGS

- ☐ Assumption of Jurisdiction
- ☐ Authorized Sale
- ☐ Attorney Appointment
- ☐ Body Attachment Issuance
- ☐ Commission Issuance

☐ Constructive Trust

- ☐ Contempt
- ☐ Deposition Notice
- ☐ Dist Ct Mtn Appeal
- ☐ Financial
- ☐ Grand Jury/Petit Jury
- ☐ Miscellaneous
- ☐ Perpetuate Testimony/Evidence
- ☐ Prod. of Documents Req.
- ☐ Receivership
- ☐ Sentence Transfer
- ☐ Set Aside Deed
- ☐ Special Adm. - Atty
- ☐ Subpoena Issue/Quash
- ☐ Trust Established
- ☐ Trustee Substitution/Removal
- ☐ Witness Appearance-Compel

PEACE ORDER

- ☐ Peace Order

EQUITY

- ☐ Declaratory Judgment
- ☐ Equitable Relief
- ☒ Injunctive Relief
- ☐ Mandamus

OTHER

- ☐ Accounting
- ☐ Friendly Suit
- ☐ Grantor in Possession
- ☐ Maryland Insurance Administration
- ☐ Miscellaneous
- ☐ Specific Transaction
- ☐ Structured Settlements

IF NEW OR EXISTING CASE: RELIEF (Check All that Apply)

- | | | | |
|---|---|--|---|
| <input type="checkbox"/> Abatement | <input type="checkbox"/> Earnings Withholding | <input type="checkbox"/> Judgment-Interest | <input type="checkbox"/> Return of Property |
| <input checked="" type="checkbox"/> Administrative Action | <input type="checkbox"/> Enrollment | <input type="checkbox"/> Judgment-Summary | <input type="checkbox"/> Sale of Property |
| <input type="checkbox"/> Appointment of Receiver | <input type="checkbox"/> Expungement | <input type="checkbox"/> Liability | <input type="checkbox"/> Specific Performance |
| <input type="checkbox"/> Arbitration | <input type="checkbox"/> Findings of Fact | <input type="checkbox"/> Oral Examination | <input type="checkbox"/> Writ-Error Coram Nobis |
| <input type="checkbox"/> Asset Determination | <input type="checkbox"/> Foreclosure | <input type="checkbox"/> Order | <input type="checkbox"/> Writ-Execution |
| <input type="checkbox"/> Attachment b/f Judgment | <input type="checkbox"/> Injunction | <input type="checkbox"/> Ownership of Property | <input type="checkbox"/> Writ-Garnish Property |
| <input type="checkbox"/> Cease & Desist Order | <input type="checkbox"/> Judgment-Affidavit | <input type="checkbox"/> Partition of Property | <input type="checkbox"/> Writ-Garnish Wages |
| <input type="checkbox"/> Condemn Bldg | <input type="checkbox"/> Judgment-Attorney Fees | <input type="checkbox"/> Peace Order | <input type="checkbox"/> Writ-Habeas Corpus |
| <input type="checkbox"/> Contempt | <input type="checkbox"/> Judgment-Confessed | <input type="checkbox"/> Possession | <input type="checkbox"/> Writ-Mandamus |
| <input type="checkbox"/> Court Costs/Fees | <input type="checkbox"/> Judgment-Consent | <input type="checkbox"/> Production of Records | <input type="checkbox"/> Writ-Possession |
| <input type="checkbox"/> Damages-Compensatory | <input type="checkbox"/> Judgment-Declaratory | <input type="checkbox"/> Quarantine/Isolation Order | |
| <input type="checkbox"/> Damages-Punitive | <input type="checkbox"/> Judgment-Default | <input type="checkbox"/> Reinstatement of Employment | |

If you indicated **Liability** above, mark one of the following. This information is not an admission and may not be used for any purpose other than Track Assignment.

☐ Liability is conceded. ☐ Liability is not conceded, but is not seriously in dispute. ☐ Liability is seriously in dispute.

MONETARY DAMAGES (Do not include Attorney's Fees, Interest, or Court Costs)

☒ Under \$10,000 ☐ \$10,000 - \$30,000 ☐ \$30,000 - \$100,000 ☐ Over \$100,000

☐ Medical Bills \$ _____ ☐ Wage Loss \$ _____ ☐ Property Damages \$ _____

ALTERNATIVE DISPUTE RESOLUTION INFORMATION

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

A. Mediation	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	C. Settlement Conference	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
B. Arbitration	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	D. Neutral Evaluation	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

SPECIAL REQUIREMENTS

- ☐ If a Spoken Language Interpreter is needed, **check here and attach form CC-DC-041**
- ☐ If you require an accommodation for a disability under the Americans with Disabilities Act, **check here and attach form CC-DC-049**

ESTIMATED LENGTH OF TRIAL

*With the exception of Baltimore County and Baltimore City, please fill in the estimated **LENGTH OF TRIAL**.*

(Case will be tracked accordingly)

- | | |
|---|---|
| <input type="checkbox"/> 1/2 day of trial or less | <input type="checkbox"/> 3 days of trial time |
| <input type="checkbox"/> 1 day of trial time | <input type="checkbox"/> More than 3 days of trial time |
| <input type="checkbox"/> 2 days of trial time | |

BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

For all jurisdictions, if Business and Technology track designation under Md. Rule 16-308 is requested, attach a duplicate copy of complaint and check one of the tracks below.

- | | |
|---|---|
| <input type="checkbox"/> Expedited - Trial within 7 months of Defendant's response | <input type="checkbox"/> Standard - Trial within 18 months of Defendant's response |
|---|---|

EMERGENCY RELIEF REQUESTED

**COMPLEX SCIENCE AND/OR TECHNOLOGICAL CASE
MANAGEMENT PROGRAM (ASTAR)**

*FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO ASTAR RESOURCES JUDGES under
Md. Rule 16-302, attach a duplicate copy of complaint and check whether assignment to an ASTAR is requested.*

- ☐ **Expedited** - Trial within 7 months of Defendant's response ☐ **Standard** - Trial within 18 months of Defendant's response

**IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY, OR BALTIMORE COUNTY,
PLEASE FILL OUT THE APPROPRIATE BOX BELOW.**

CIRCUIT COURT FOR BALTIMORE CITY (CHECK ONLY ONE)

- ☒ **Expedited** Trial 60 to 120 days from notice. Non-jury matters.
☐ **Civil-Short** Trial 210 days from first answer.
☐ **Civil-Standard** Trial 360 days from first answer.
☐ **Custom** Scheduling order entered by individual judge.
☐ **Asbestos** Special scheduling order.
☐ **Lead Paint** Fill in: Birth Date of youngest plaintiff _____.
☐ **Tax Sale Foreclosures** Special scheduling order.
☐ **Mortgage Foreclosures** No scheduling order.

CIRCUIT COURT FOR BALTIMORE COUNTY

- ☐ **Expedited**
(Trial Date-90 days) Attachment Before Judgment, Declaratory Judgment (Simple),
Administrative Appeals, District Court Appeals and Jury Trial Prayers,
Guardianship, Injunction, Mandamus.
- ☐ **Standard**
(Trial Date-240 days) Condemnation, Confessed Judgments (Vacated), Contract, Employment
Related Cases, Fraud and Misrepresentation, International Tort, Motor Tort,
Other Personal Injury, Workers' Compensation Cases.
- ☐ **Extended Standard**
(Trial Date-345 days) Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or
Personal Injury Cases (medical expenses and wage loss of \$100,000, expert
and out-of-state witnesses (parties), and trial of five or more days), State
Insolvency.
- ☐ **Complex**
(Trial Date-450 days) Class Actions, Designated Toxic Tort, Major Construction Contracts, Major
Product Liabilities, Other Complex Cases.

April 1, 2022

Date

100HollidayStreet

Address

Baltimore

City

MD

State

21202

Zip Code


Signature of Counsel / Party

Stephen Salsbury

Printed Name

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CIVIL DIVISION

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PETITION FOR JUDICIAL REVIEW¹

2. Staying the Directive issued on March 26, 2022 by the Maryland Department of the Environment to the Maryland Environmental Service; and

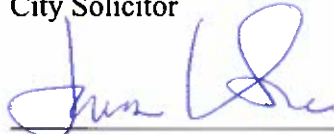
¹ This Action is styled as a Petition for Judicial Review. In the alternative, should this court so require, it should be interpreted as a Complaint for Injunctive Relief to set aside the Secretary's Order.

3. Granting such other relief as the Court deems just and proper.

WHEREFORE, for the reasons set forth more fully in the accompanying Memorandum of Law, which is hereby incorporated by reference, the City requests that the Court grant the City's Petition for Judicial Review.

Dated: April 1, 2022

Respectfully Submitted,
James L. Shea
City Solicitor



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Attorneys for Mayor and City Council of Baltimore

IN THE CIRCUIT COURT FOR BALTIMORE CITY

**Petition of the Mayor and
City Council of Baltimore**

**For Judicial Review of the
Decision of the Secretary of
the Maryland Department
of the Environment**

**MARYLAND DEPARTMENT OF
ENVIRONMENT**
Respondent

Serve on:
Secretary Ben Grumbles

**MARYLAND ENVIRONMENTAL
SERVICE**
Respondent

Serve on:
Executive Director Charles Glass

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Civil Action No. _____

**MAYOR AND CITY COUNCIL OF BALTIMORE’S MEMORANDUM OF LAW IN
SUPPORT OF PETITION FOR JUDICIAL REVIEW OF MDE’S ORDER**

The Mayor and City Council of Baltimore (“the City”), by and through undersigned counsel, submits this Memorandum of Law in Support of its Petition for Judicial Review of an Order by the Secretary of the Maryland Department of the Environment (“MDE”), and in support thereof states the following:

I. INTRODUCTION

On March 24, 2022, the Secretary of MDE issued an Order requiring the City to come into compliance with the State-issued discharge permit to operate the Back River Wastewater Treatment Plant (“WWTP”) also known as Back River within 48 hours. *See **Exhibit A***, MDE Order. On March 27, 2022, the Secretary of MDE issued a Directive (the “MDE Directive”) to

the Maryland Environmental Service (“MES”) to, among other things, take control of Back River and bring it into compliance with its NPDES permit. See **Exhibit B**, the MDE Directive.

The City’s primary objective has been, and will remain, optimizing performance at Back River. To that end, the City welcomes, and indeed has solicited, the assistance of the State at virtually every step of its efforts to improve operations at the Plant. While an Order that the City come into compliance with its Permit might seem a reasonable demand, the Secretary’s actions distort both the facts surrounding operations at the Plant and the history of the City’s efforts to improve all aspects of Back River. As explained below, the MDE Order violates Maryland law because the 48-hour compliance period was unreasonably (actually, impossibly) short. For that reason alone, the MDE Order must be vacated. As is also explained below, the MDE Order set the City up to fail when it predictably did not return the Back River Plant to full compliance within two days. That “failure” was then MDE’s justification for issuing the MDE Directive requiring the Maryland Environmental Service (“MES”) to take over control of the Back River Plant.¹

MDE’s sudden and unexpected issuance of the Order caught the City off guard because it followed months of cooperation with MDE toward the issuance of a consent decree to govern long-term improvements to the Plant. For historical context, in October 2021, the City embarked on what it believed to be a good faith partnership with MDE to address persistent problems at Back River after receiving a letter from MDE in August 2021 identifying a number of problems at the Plant. Progress has no doubt been frustratingly slow, due in large part to the historic and unprecedented pandemic-induced challenges to staffing and the supply chain. As noted below,

¹ In addition to the MDE Order being vacated, the MDE Directive to MES must be vacated or amended such that MES plays a supporting role to the City, rather than taking control of the City’s Back River Plant.

MDE itself has faced similar staffing concerns during the pandemic, with the Secretary repeatedly citing retirements and workforce shortages as affecting MDE's ability to engage in proactive enforcement. But the City has worked tirelessly to address the complex issues with the plant. Not only has the City been working diligently to bring the plant into compliance with its Permit, the City made sure MDE was involved every step of the way as the City sought to improve operations at the Plant. Even when MDE initiated a lawsuit in January, the City continued its partnership, knowing that collaboration with MDE was necessary to resolve the longstanding issues at Back River.

The Order that MDE filed without warning on March 24th glosses over this history. In fact, over the past five months, MDE and the City have met regularly with the goal of crafting a consent agreement that the City understood would guide the next phase of improvements of the Plant. It was initially hoped that MDE would provide a draft Consent Decree by the end of 2021. Now, in April 2022, the City has yet to receive a draft. And just three weeks prior to the issuance of the MDE Order, MDE had instructed the City to develop a plan for the necessary Plant improvements and to submit that plan within 90 days. See **Exhibit C**, MDE Information Request for Back River Wastewater Treatment Plant, at p. 6 of Attachment A to the request. An MES plan to bring the plant into compliance, now required by the Directive, will be wholly duplicative of the City's October 2021 strategic plan and the third-party certified engineering and evaluation report that MDE instructed the City to produce in 90 days (from March 4, 2022).

On Friday, March 25th, halfway through the 48-hour ultimatum, the Secretary met with the Mayor and other City officials, providing assurances that the State was looking to support the City. There was no mention whatsoever of an impending Directive to the Maryland Environmental Service ("MES") to take over operations at the Plant. Twenty-four hours later, MDE carried out

another follow-up inspection, knowing full well based on months of briefings and information sharing that there was no chance that the City would have miraculously resolved all issues at Back River in 48 hours. MDE then served its “Directive” taking the extraordinary step of instructing MES to take over the Plant, apparently unaware that the City had been attempting for months, through one of its contractors, to obtain MES’s assistance.

On March 27, 2022, MDE abruptly directed MES to take charge of the Back River WWTP, including its operations, maintenance, and improvements functions. This was despite the fact that the City was previously informed that MES’s inability to support the City’s staff augmentation request was attributable to MES’s staffing shortages. But instead, after months of delay and hostile public questioning of MDE’s enforcement efforts, and mere days after a public call for his resignation, the Secretary of MDE has sprung into action and filed an absurd demand for the City to instantaneously come into compliance with its discharge permit. At no point in the preceding five months of cooperation had anyone from MDE discussed this as a possibility. Instead, the Secretary blindsided the City in a sharp departure from the months-long collaborative effort. The Secretary knew full well that full compliance would be impossible to manage in 48 hours, but sought to make a highly public demonstration of action with respect to the City.

The MDE Order and subsequent takeover efforts have misinformed the public about the state of affairs at Back River. The Order has created confusion and threatens to delay and/or undermine the City’s efforts to improve operations at the Plant. While there is no use in speculating what prompted the Secretary’s sudden about face, the City is left with no choice but to petition this Court to vacate both the MDE Order and Directive to avert inappropriate liability on the City for not coming into compliance in the impossibly short 48-hour period and to avoid the unwarranted seizure by MDE of control of the City’s Wastewater Treatment Plant at Back

River.

The City's efforts over the last five months and indeed in the preceding several years underscore one goal that all parties must agree on: maintaining a safe and effective operation at Back River. Equally clear is that achieving this goal will require effective collaboration between City and State officials. To permit the Secretary of MDE at this eleventh hour to completely upend the process that the City has been dutifully engaged in is unfair, and more importantly, will impede the progress that the City has made at Back River.

Because MDE's Order is unreasonable and because the City's understandable inability to comply was used as a pretext for ordering MES to take over the City's Plant, the City is left with no choice but to challenge, pursuant to section 9-263 of the Environment Article, MDE's Order and MDE's Directive to MES in this action.² The City therefore asks this Court to review and ultimately enjoin the Secretary's unreasonable, unnecessary, and unjust Order, and instead to instruct MDE to re-engage in the consent decree process to fix Back River by working alongside the City as a partner.

II. STATEMENT OF FACTS

a. History of the Back River Wastewater Treatment Plant

The Back River Wastewater Treatment Plant is located at 8201 Eastern Avenue, Baltimore, Maryland ("Back River WWTP") and serves an estimated 1.3 million residents in a 140 square mile area of Baltimore City and County. The Plant opened in 1911 and occupies a 466-acre site situated on the west shore of the Back River. The Plant is subject to a discharge permit issued by MDE, State Discharge Permit Number 15-DP-0581A, NPDES Number MD0021555, which

² This Action is styled as a Petition for Judicial Review. In the alternative, should this court so require, it should be interpreted as a Complaint for Injunctive Relief to set aside the Secretary's Order.

became effective May 1, 2018 (the “Permit”). **Exhibit D.** To maintain compliance with the permit, the State of Maryland requires that certain limits are to be met on such water quality factors as the amount of dissolved oxygen, suspended solids, and nutrients (phosphorus and nitrogen) in the effluent when it is released. These strict standards require complex, state-of-the-art facilities to meet permit standards for the protection of Back River and the Chesapeake Bay.

That is why Back River has been upgraded at significant cost in recent years to include an Enhanced Nutrient Removal (ENR) facility that is designed to reduce total nitrogen (“TN”) and total phosphorus (“TP”), at an estimated cost of \$280 million. In addition, the City recently completed a Headworks Improvement Project at a cost of approximately \$430 million, which among other things provided for a new Grit Facility. Another \$285 million has been spent to clean and repair the primary settling tanks and construct twelve new secondary clarifiers and a pumping station to improve the Plant’s ability to settle out solids from the process water, thereby reducing the amount of solids in the downstream processes. The City also spent \$80 million for improvements to ensure electrical reliability of the plant. And three years ago, the City hired a consultant to study the Plant’s biosolids handling to ensure an optimal handling process; the study should be completed by the end of the fiscal year. In short, the City has expended considerable resources to modernize Back River into what would be a world class facility absent the Covid-19 pandemic and unprecedented economic impacts that have plagued the facility over the past two years.

Back River’s Permit expires on April 30, 2023. **Exhibit D.** Part III.A. of the Permit requires the City to submit its permit monitoring results in discharge monitoring reports (“DMRs”) and monthly operating reports (“MORs”) that are submitted to MDE using an electronic reporting tool known as “Net DMR”. These reports are regularly submitted, keeping MDE fully abreast of

the operations. The Permit contains “Effluent Limitations” for a variety of pollutants or parameters (e.g. biochemical logical oxygen demand (“BOD”), total suspended solids (“TSS”), ammonia, nitrogen, phosphorus, e. coli, total residual chlorine, pH, dissolved oxygen (“DO”), and toxicity). Depending on the pollutant or parameter, most of the effluent limits are expressed as a concentration or mass loading (or both) on a daily, weekly, monthly, seasonal, or annual basis limit on the pounds discharged or the concentration.

The Plant is designed to treat 180 million gallons per day (“MGD”) of wastewater but currently treats 130 MGD given current needs. Hydraulically, the Plant can handle peak flows of over 400 MGD. Utilizing phosphorus control by chemical addition and nitrogen control by biological processes, the Plant is designed to remove a majority of these nutrients before discharge.

b. Remediation Efforts in 2021

Baltimore City has been working with MDE and the Office of the Attorney General (“OAG”) since October of 2021 to address problems with the performance at the Back River and Patapsco Wastewater Treatment Plants that existed prior to but were significantly exacerbated by the pandemic. These efforts were with the publicly stated goal of entering into a consent decree that incorporated a binding schedule of improvements that would return the plants to compliance. Throughout this time period, the City has provided biweekly briefings to MDE via teleconference, along with regularly updated progress reports showing each action item and its expected completion date. MDE has been advised on a regular basis of the problems created by the pandemic in terms of obtaining supplies and parts, arranging for equipment repairs, and obtaining supplemental staff.

The City did not delay any improvements pending the negotiation of a consent decree—it timely pursued all necessary improvements based on sound engineering advice and within the

constraints imposed by the pandemic. In the last year, the City has spent millions of dollars on consultants and emergency improvements on both plants in an effort to address longstanding issues. Specifically, the City has expended in excess of \$10 million more than it originally budgeted to remedy problems at Back River and has committed many millions more to additional improvements. The expended funds do not include the anticipated capital improvement plan that will cost over \$100 million to address short-term and long-term upgrades to both plants. It is unreasonable and unnecessary to now force the City to expend additional funds for redundant efforts by MES pursuant to the Secretary's March 27th Directive.

c. Pressure Mounts on MDE For Failing to Meet Enforcement Obligations

MDE was itself plagued by delays in the fall and winter of 2021-2022, and has cited personnel shortages to excuse its own failure to properly oversee drinking water in Maryland. For example, MDE was lambasted after more than 27 people fell ill from eating oysters after MDE failed to timely respond to a sewage overflow in St. Mary's County. *Dozens fall ill after eating MD oysters from St. Mary's creek state failed to close*, The Southern Maryland Chronicle (December 1, 2021).³ In another episode, a poultry-rendering plant in Dorchester County was discharging pollutant from April 2019 through February 2022 without any enforcement action being taken. After MDE finally filed an action in February 2022, one community leader lamented "It's been eight years for us that we've been trying to get MDE to actually do their job." *Maryland, environmental groups sue over pollution from Eastern Shore rendering plant*, Bay Journal (Feb. 4, 2022).⁴ Even more troubling, reports emerged earlier this year of hundreds of "Zombie permits"

³ Online at https://www.bayjournal.com/news/fisheries/dozens-fall-ill-after-eating-md-oysters-from-creek-state-failed-to-close/article_17178138-522d-11ec-94cb-63376a5bf461.html.

⁴ Online at https://www.bayjournal.com/news/pollution/maryland-environmental-groups-sue-over-pollution-from-eastern-shore-rendering-plant/article_628b1aea-85f3-11ec-8f61-8ffe57808512.html.

where wastewater treatment plants operate under an expired permit. *ShoreRivers: Put an End to Zombie Permits and Hold Polluters in Md. Accountable*, Maryland Matters (March 12, 2022).⁵

Throughout this period, MDE blamed staff shortages as to why it was unable to meet its obligations. *Lawmakers Press Environment Secretary on Staffing and Enforcement Shortfalls*, Maryland Matters (Jan. 19, 2022).⁶

While MDE floundered, the new Director of DPW, Dr. Jason Mitchell, began responding to the plant conditions that he inherited within weeks of his appointment. Dr. Mitchell instituted enterprise-wide changes to facilitate DPW's responsive actions, executed an emergency procurement authorization to start addressing DPW's staffing gaps, equipment and part needs, procured contract service support, produced a strategic plan (*i.e.*, immediate, short term, and long term) to address the violations, instituted an enterprise compliance program to ensure quality assurance; mandated a full assessment via a gap analysis and has already raised and invested millions of dollars for remediation of the plants.

Pressure continued to mount in March 2022 after reports of a fish kill and floating solids in Back River. MDE investigated these reports and concluded that the floating material was filamentous algae, not human feces as had been reported. Untreated sewage has not been discharged from the Plant and at no point did MDE determine that the fish kill was a result of Plant operations. Despite these facts, legislators who were dissatisfied with the pace of improvements at Back River took issue with MDE's track record on enforcement. Just days before issuing its order, Baltimore County Republican Delegate Robin Grammer called for the Secretary of MDE to

⁵ Online at <https://www.marylandmatters.org/2022/03/12/shorerivers-put-an-end-to-zombie-permits-and-hold-polluters-in-md-accountable/>.

⁶ Online at <https://www.marylandmatters.org/2022/01/19/lawmakers-press-environment-secretary-on-staffing-and-enforcement-shortfalls/>.

resign.

d. MDE Issues Orders with Impossible Deadline to Create a Pretext for Ordering MES' Takeover of the Back River Plant in Response to Public Pressure

Immediately following the call for the Secretary's resignation, on March 22, 2022, MDE appeared at Back River for an inspection. Just two days later, on Thursday March 24, 2022, the Secretary issued its Order with an accompanying press release directing the City to perform numerous tasks at Back River and "within 48 hours of the service of [the] Order [or by March 26, 2022]... submit to the Department sufficient documentary evidence that the Back River WWTP is operating in compliance with all terms of the Back River Discharge Permit and that it has ceased all unpermitted discharges." The City then became obligated to "raise any funds that are necessary to comply on time with the order of the Secretary." *See* Environment Article § 9-256(a). The Order further advises the City that if it disagrees, it could, pursuant to § 9-263, commence an action such as this in circuit court to vacate or set aside the Order on the grounds that it is "unlawful or unreasonable, or that the Order is not necessary for the protection of the public health or comfort."

The Secretary and the Mayor spoke regarding the Order on Friday, March 25, 2022. At that time, the Secretary made no mention of MDE's intention to issue any directive about taking over the Plant. Nevertheless, on Sunday, March 27th, the Secretary issued its Directive ordering MES to take control of the Plant. **Exhibit B.** It instructs MES to "take charge of the Back River WWTP, including its operation, maintenance, and improvements functions, in order to work with Baltimore City" to meet multiple objectives at the Plant, including, among other things, compliance with the Plant's discharge permit through any appropriate alterations to the Plant and provision of supplemental staff, if appropriate. Unlike the March 24, 2022 Order to the City, the MDE Directive to MES does not require MES to achieve compliance within 48 hours (or any other deadline). Surely, if 48-hours were a reasonable deadline, MDE should have been able to give

MES a similarly short deadline to achieve compliance following its taking control of Back River. Furthermore, MDE added a provision protecting MES from liability: “nothing in the Directive imposes liability on the Service...for violations of the Back River Discharge Permit.” See **Exhibit B**, Directive, p. 8, fn. 2. If it was reasonable for the City to bring Back River into compliance in 48 hours without any advance notice, one would think that MES should be able to do so within some similarly short time frame such that a provision shielding them from future liability for non-compliance would not be necessary. The reality is that MDE knew it would take much longer than 48 hours to bring the Plant back into full compliance and sought to provide MES with liability protection during that extended period.

MDE’s unreasonable Order to come into compliance within 48 hours inappropriately imposes redundant liability on the City for any non-compliance with its NPDES permit going forward. In effect, it threatens liability for the City for any permit exceedances and for violating the order for each such exceedance after the 48-hour deadline has passed. Thus, if MDE’s unreasonable Order becomes effective, the City could be subject to double penalties of \$10,000 per day pursuant to § 9-268 of the Environment Article, in addition to those already sought in *MDE v. Baltimore City*.⁷ That is patently unreasonable and the Order must be vacated.

III. LEGAL STANDARD

A party can challenge an Order issued by the Secretary of MDE by filing an action in Circuit Court pursuant to § 9-263 of Maryland’s Environment Article. The action must be filed within 10 days of the Order, and must state why the Order is unlawful or unreasonable, or not

⁷ MDE filed a lawsuit in this court against the City on January 21, 2022, *Maryland Department of the Environment v. Mayor and City Council of Baltimore*, Case No. 24-C-22-000386, seeking civil penalties and injunctive relief for alleged violations of the terms of the Back River Discharge Permit.

necessary for the public health. The corresponding Petition to this Memorandum initiates such an action in accordance with § 9-263 of Maryland's Environment Article.

IV. ARGUMENT

a. MDE's Order is Clearly Unreasonable

As summarized above, the MDE Order may have been politically expedient, but it must be set aside pursuant to § 9-263 of the Environment Article because the 48-hour compliance period is more than unreasonable—it is impossible. That arbitrarily short deadline was clearly inconsistent with MDE's March 4, 2022 instruction to the City to procure a third-party expert to provide a certified report (in addition to the October 2021 Strategic Plan) identifying the necessary steps to bring the Plant back into compliance. That instruction and its 90-day period, to be followed by an implementation schedule, was based upon months of information exchange and Plant inspections by MDE. The fact that MDE gave MES no such short-term deadline to bring the Plant into compliance reinforces the impossibility of the 48-hour deadline. To the contrary, MDE's Directive requires MES to perform its own study (also due in June) to identify the steps needed to bring the Plant into compliance (through a further implementation period). That underscores the folly of the 48-hour compliance requirement. MES gets 10 weeks to study what needs to be done while the City got 48 hours fix the Plant without the benefit of the study to determine what needed to be done. The time was clearly unreasonable and MDE's Order put the City's compliance cart (March 26, 2022) ahead of the planning horse (June 6, 2022). For these reasons, the MDE Order should be vacated. Such action will return MDE and the City to the already expedited path forward of having an evaluation completed by a third-party engineer by June 6, at which time a schedule of activities can be developed and included in an appropriate judicial consent order.

Further, the Order was issued despite months of efforts on the part of the City, including good faith efforts to negotiate and collaborate with MDE. For these reasons, the City's Petition for Judicial Review should be granted, and the Secretary's Order vacated. The City is committed to fixing the issues at the Back River plant. Indeed, as stated previously, if the City believed this action was likely to accomplish that goal, the City would not challenge the Secretary's Order. However, the Order issued by the Secretary will achieve the opposite result by disrupting progress that is underway as a result of the City's efforts. For these reasons, this Court should review and ultimately enjoin the MDE Order.

b. MDE's Order Ignores Past and Present Issues Confronted by DPW

DPW has worked diligently, both over the past year and even earlier to address Back River's performance issues. But problems accelerated dramatically during the upheaval caused by the Covid-19 pandemic.⁸ Covid-19 exacerbated a shortage of operations and maintenance staff due to illness and quarantine, problems repairing equipment due to nationwide supply chain issues, and increased demands for qualified contractors.

During the pandemic, Back River altered its operations to prevent the virus from spreading throughout the plant staff. Nonetheless, Back River had a high rate of Covid-19 cases among its staff. Plant managers were compelled to shut down separate components of its operations at least seven times. Plant managers scheduled skeleton crews for plant operations to reduce the spread of the virus among staff while ensuring the plant had enough employees to operate the facilities. This diverted staff from cleaning facilities and equipment and directly contributed to the violations

⁸ This acceleration is demonstrated by the allegations in *Maryland Department of the Environment v. Mayor and City Council of Baltimore*, Case No. 24-C-22-000386. MDE alleges in its complaint that the Plant exceeded a daily, weekly, monthly, or quarterly effluent limitation on 26 occasions during the *44-month period* between May 31, 2017 and December 31, 2020. However, the complaint alleges that the Plant exceeded a daily, weekly, monthly, or quarterly effluent limitation on 88 occasions during the first 10 months of 2021 and that it exceeded annual load limits for total suspended solids, total nitrogen, and total phosphorus in 2021.

and the equipment issues of the plant. On a few occasions, the City had to transfer employees between the Back River and Patapsco plants to ensure their operation. Senior leaders also worked at the plant sites alongside the wastewater facility employees to ensure shifts were fulfilled. This typifies the earnest efforts of the City to ensure that both plants functioned as well as possible in these unprecedented circumstances.

Second, DPW has been victim of major supply chain shortages and rising prices that have persisted throughout the pandemic, an experience shared by virtually every other public utility around the country. *See Public Works Agencies Hit by Rising Prices and Supply Delays*, Route-Fifty (September 17, 2021).⁹ Again, this is not unique to Baltimore, but DPW has been working diligently to confront these historic challenges and has made slow but steady progress over the past year. Upending that momentum and progress right now will not make matters better at Back River.

Despite the difficulties faced in recent years, the City has taken numerous actions to address performance problems at the Back River Plant. These actions have accelerated over recent months. The Wastewater Facilities Division of the Bureau of Water and Wastewater of DPW was granted emergency contracting authority on September 14, 2021, to allow it to more quickly obtain services of contractors, consultants, and all associated supplies, materials and equipment to address permit non-compliance issues at the Plant. The Bureau used this authority to: hire consultants to propose solutions to the operational problems; repair equipment; employ contract staff equivalent to 15 full time employees to supplement DPW staff at the Plant; and arrange for the performance by outside contractors of maintenance activities that could not be performed by DPW staff during

⁹ Online at <https://www.route-fifty.com/infrastructure/2021/09/public-works-agencies-hit-rising-prices-and-supply-delays/185443/>.

the pandemic. In addition, DPW accelerated numerous capital projects to improve Plant operations and increased its training and recruitment efforts for permanent staff. A request for proposal has also been issued to expedite rehabilitation of the sand filters. DPW is pushing forward the advertisement of the Egg-Shaped Digester rehabilitation as well. Additionally, the scope of pending advertisement projects has been expanded to include necessary rehabilitation to the Dissolved Air Flotation Thickeners and Gravity Belt Thickener building.

In the midst of these efforts, a City contractor contacted MES on behalf of the City in an attempt to obtain additional operational support. MES advised the contractor in early March that it had no staff available to assist until sometime in April 2022. The City is at a loss to understand how MES is now able to provide staff with the expertise to take over managing, operating and maintaining Back River.

c. MDE Has Been Well Aware of the Issues and Progress of the City to Date

MDE has been informed on a bi-weekly basis since October of 2021 of the City's efforts to improve operations and perform upgrades at the Plant and is fully aware of the difficulties the City faces with obtaining parts, equipment, and staff, and with performance issues with some City contractors. Significantly, MES has been on notice of the City's challenges at Back River and surely had advance notice of the Directive. Yet even MES has been unable to achieve the requirements of the MDE Order well after 48 hours since being ordered to take control of the plant. The impossibility of MDE's 48-hour deadline to restore the Plant to full compliance will be even more fully evident when MES is still unable to do so weeks from now. Despite being aware of the difficulties the City faces at the Plant due to two years of pandemic and economic-related disruptions, MDE's March 24 Order required the City to bring the Plant back into compliance within 48 hours, a task MDE knew was not only unreasonable but impossible to achieve when it

issued the Order.

MDE has been aware of the City's progress to correct issues at Back River. Over the past five months, the City has expended considerable time and resources attempting to keep MDE informed of its efforts, providing a strategic plan, providing weekly and bi-weekly updates to legal and technical staff, and awaiting MDE's promised draft Consent Decree.

d. MDE's Order Is More Likely to Hinder than to Help Remediation Efforts

By virtue of the MDE Order, the City became obligated under § 9-256(a) of the Environment Article to "raise any funds that are necessary to comply on time with the order of the Secretary", meaning spend tens of millions of dollars, hire dozens of staff, and execute dozens of contracts, all within 48 hours, which MDE also knew was impossible. The MDE Order set the City up to fail as a pretext for MDE to issue its Directive for MES to take control of the City's Plant.

While MES support is welcomed (and was previously solicited) by the City, so far, despite the MDE Directive, MES has only been able to send about four (4) people to the Plant without a schedule or plan as to how MES will staff the Plant. It was brought to the City's attention that one of the MES employees can only be onsite at Back River a couple of times per week. MES's current approach is unacceptable if they are to exercise sole control over the plant, given the complexities of Back River.

Despite having even more time than the MDE Order gave the City, MES has been unable to bring the Plant into full compliance. Without any disrespect to MES, the City has major concerns as to MES's requisite experience to manage, operate, and maintain a plant of the size and complexity of the Back River because MES customarily provides services to small wastewater treatment plants in rural areas of Maryland.

Moreover, the Directive requires MES to perform duplicate tasks that MDE has already

instructed the City to perform and that the City is performing. For example, the Directive requires the Service to “undertake a comprehensive evaluation and assessment of the Back River WWTP’s operation, maintenance, staffing, and equipment and, by June 6, 2022, to submit a report to the Department of the Service’s findings and recommendations, including a comprehensive list of needed improvements, ranked by their impact on compliance with discharge permit effluent limitations.” See **Exhibit B**, par. 16. This portion of the Directive wholly duplicates MDE’s March 4, 2022 instruction to the City to provide to MDE within 90 days a “third-party certified engineering evaluation and report for the plant’s operation and equipment” which “shall include a comprehensive list of needed improvements, ranked by their impact on compliance with discharge permit effluent limits.” See MDE Information Request for Back River Wastewater Treatment Plant, attached hereto as **Exhibit C**, at p. 6 of Attachment A to the request. In other words, MDE gave the City 90 days to issue a report on the status at Back River, and then Ordered a takeover of the Plant 23 days later.

The City has already procured a contractor to produce the requested certified report and that work had commenced before MDE issued its Order. The City should not be forced to dedicate city personnel and resources to such unnecessary duplicative efforts. MDE has given no indication that the national consulting firm which the City has retained to perform this evaluation is unqualified or incapable of delivering the work product as MDE seeks.

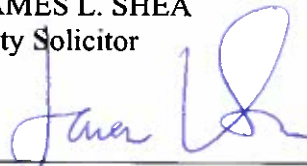
The predicate for the MDE Directive’s unprecedented requirement that MES take over control of the Back River Plant was that the City was unable to bring the Back River Plant into full compliance between March 24 and March 26, 2022. That unfair and politically motivated justification is an inappropriate foundation for the MDE Directive. Further, MES is not in a position to take control of the Plant either operationally or from a management perspective,

never mind both. Finally, MES does not have the expertise and experience to run such a large and complex plant. For these and the other reasons noted above, the Court should vacate the MDE Directive. The Court should leave the agreed upon process in place and allow it to proceed, including the planned June 6, 2022 third-party evaluation of the necessary plant improvements and a schedule to implement same. Such improvements should be implemented through a mutually agreed consent decree, a draft of which the City awaits from MDE.

V. CONCLUSION

For the foregoing reasons, the City requests this Court to (1) grant the City's Petition for Review of the Order, (2) vacate both the Order pursuant to § 9-263 of the Environment Article and the MDE Directive to MES, and (3) provide such other additional relief as is just and proper.

JAMES L. SHEA
City Solicitor



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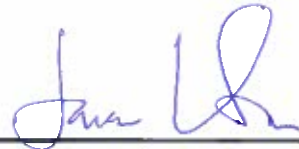
Attorneys for Mayor and City Council of Baltimore

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April, 2022, a copy of the foregoing Petition for Judicial Review of an Order by the Secretary of the Maryland Department of the Environment was sent via electronic mail to the following:

Ben Grumbles
Secretary of the Environment
Maryland Department of the
Environment
Montgomery Park Business Center
1800 Washington Blvd.,
Baltimore, MD 21230
Phone: 410-537-3084
Email: ben.grumbles@maryland.gov

Charles Glass
Executive Director
Maryland Environmental Service
259 Najoles Road
Millersville, MD 21108
Phone: 410-729-8200
Email: cglass@menv.com

A handwritten signature in blue ink, appearing to read "James L. Shea", written over a horizontal line.

James L. Shea, Esq.
Baltimore City Solicitor

Petition of the Mayor and City Council of Baltimore

**MARYLAND DEPARTMENT OF
ENVIRONMENT**

Civil Action No. _____

**MARYLAND ENVIRONMENTAL
SERVICE**

Serve on:
Executive Director Charles Glass

Upon consideration of the Mayor and City Council of Baltimore’s Petition for Judicial Review of an Order by the Secretary of the Maryland Department of the Environment, it is, on this _____ day of _____ 2022, hereby ORDERED:

1. The City's Petition for Review of the Order is GRANTED;
2. The Order issued on March 24, 2022 by the Secretary of the Maryland Department of the Environment requiring Baltimore City to operate Back River WWTP in compliance with all terms of the Back River Discharge Permit and the subsequent Directive issued by the Secretary of the Environment on March 27, 2022 are both VACATED.

JUDGE, CIRCUIT COURT

EXHIBIT A

STATE OF MARYLAND
DEPARTMENT OF THE
ENVIRONMENT
1800 Washington Boulevard
Baltimore, Maryland 21230,

v.

MAYOR AND CITY COUNCIL
OF BALTIMORE, MARYLAND
250 City Hall
Baltimore, Maryland 21202,

Serve on:

James L. Shea, City Solicitor
Baltimore City Solicitor's Office
Baltimore City Department of Law
100 North Holliday Street, Suite 101
Baltimore, Maryland 21202.

SECRETARY OF THE
ENVIRONMENT

* * * * *

ORDER

The Mayor and City Council of Baltimore ("Baltimore City") applied for, and the Maryland Department of the Environment (the "Department") established conditions and requirements and authorized Baltimore City, pursuant to NPDES Discharge Permit Number MD0021555, State Discharge Permit Number 15-DP-0581A (effective May 1, 2018; modified January 1, 2020; expires April 30, 2023) ("Back River Discharge Permit") to discharge from the Back River Wastewater Treatment Plant ("Back River WWTP" or the "Plant"), located at 8201 Eastern Avenue, Baltimore, Maryland.

On March 22, 2022, the Department conducted an inspection of the Back River WWTP. This inspection revealed the precipitous decline of the functioning of several critical processes at the Plant in comparison with prior inspections, including, but not limited to, those conducted on

September 20 and December 29, 2021. The March 22, 2022, inspection revealed significantly increased noncompliance with the Back River Discharge Permit that is causing new or increased unpermitted discharges to Back River, which is designated as Use II waters protected for Estuarine and Marine Aquatic Life. Additional data from Discharge Monitoring Reports submitted by Baltimore City indicate monthly violations of total suspended solids (“TSSs”), total nitrogen, and total phosphorus.

Specifically, the March 22, 2022, inspection report revealed that:

1. Only 2 of the 11 primary settling tanks (“PSTs”) were in service, and 1 of the 2 operating PSTs requires maintenance to function properly. The Back River WWTP does not have sufficient PST capacity to treat its primary waste stream;
2. Denitrification filters (“DN Filters”) were not functioning as designed because of the presence of a high solids concentration in the DN Filter influent. The Plant has 52 DN Filters arranged in 4 quads of 13 DN Filters each. Quads 1, 2 and 4 are not functioning properly because they are underwater. Additionally, the 13 DN Filters in Quad 4 are not functioning properly because they require various mechanical maintenance. These improperly functioning DN Filters are causing DN Filter influent to bypass permit required Enhanced Nutrient Reduction (“ENR”) treatment. In addition, the Department observed the presence of hydrogen sulfite (sewer gas) at the DN Filters which indicates operational or treatment process deficiencies; this is possibly related to incorrect methanol dosing;
3. January 2022 concentrations of TSS in DN Filter influent ranged between 31 and 292 mg/L. This indicates that the solids settling processes are failing. These high concentrations are causing intermittent and chronic clogging of the DN Filter system;

4. Significant algal and vegetation have grown on the weirs of the secondary clarifiers. This has caused the short circuiting of the system and likely negatively impacts TSS concentration in the Plant's treatment train wastewater;

5. Significant amounts of solids have accumulated in the secondary clarifiers. This accumulation is decreasing the quality of the Plant's final effluent.

6. Significant amounts of vegetation (*e.g.*, reed grasses) have grown and are established in the secondary clarifiers. This is preventing the proper functioning of these clarifiers; and

7. Significant amounts of vegetation (*e.g.*, reed grasses) have grown and are established in the biological reactors. This is preventing the proper functioning of these reactors.

The decline in the proper maintenance and operation of the Plant risks catastrophic failures at the Plant that may result in environmental harm as well as adverse public health and comfort effects.

Pursuant to § 9-252(a) of the Environment Article, to prevent or correct pollution of the waters of the State and to ensure the Back River WWTP is operated in a manner that will protect public health and comfort, effective immediately, Secretary Grumbles hereby ORDERS Baltimore City to operate the Back River WWTP in compliance with all terms of the Back River Discharge Permit, including, but not limited to, providing an adequate number of operating staff that are qualified to carry out the operations, maintenance, and testing functions required to ensure compliance with the Back River WWTP Permit, and to cease all unpermitted discharges from the Back River WWTP. Baltimore City shall make all necessary and appropriate alterations to the Back River WWTP and its operations in order to comply with this Order.

Within 48 hours of service of this Order, Baltimore City will submit to the Department sufficient documentary evidence that the Back River WWTP is operating in compliance with all terms of the Back River Discharge Permit and that it has ceased all unpermitted discharges.

In accordance with § 9-263 of the Environment Article, if Baltimore City is dissatisfied with this Order, it may commence, within 10 days after the service of this Order, an action in circuit court to vacate or set aside the Order on the grounds that the Order is unlawful or unreasonable, or that the Order is not necessary for the for the protection of the public health or comfort.

STATE OF MARYLAND,

DEPARTMENT OF THE ENVIRONMENT



Ben Grumbles, Secretary

Date March 24, 2022

EXHIBIT B

(2) The Secretary may:

(i) Require any public water supply system, public sewerage system, or refuse disposal system to be operated in a manner that will protect public health and comfort; and

(ii) Order the alteration, extension, or replacement of any public water supply system, public sewerage system, or refuse disposal system.

2. Section 9-252(b) of the Environment Article grants the Secretary the power to require that any public sewage system be operated in a manner that will protect public health and comfort; specifically:

(b) The Secretary:

(1) Has supervision and control over the sanitary and physical condition of the waters of this State to protect public health and comfort;

(2) Shall investigate:

(i) All sources of water and ice; and

(ii) All points of sewage discharge;

(3) Shall examine all public water supply systems, public sewerage systems, and refuse disposal systems; and

(4) Shall approve or disapprove the design and construction of any public water supply system, public sewerage system, or refuse disposal system that is to be built in this State.

3. In addition, § 3-109(c) of the Natural Resource Article provides that:

(1) Upon the failure of a municipality or person to comply with an order of the Secretary of the Environment to correct deficiencies on the operation of sewerage systems or refuse disposal works as provided in Title 9 of the Environment Article, the Secretary of the Environment shall direct the Service to take charge of and operate the systems or works to secure the results demanded by the Secretary of the Environment.

(2) Except as provided in subsection (e) of this section, upon the receipt of the directive from the Secretary of the Environment, the Service immediately shall take charge of and operate the systems or works to secure the results set forth in the directive of the Secretary of the Environment. All costs for maintenance, operation, and other services including legal fees incidental to taking possession of the sewerage system or refuse disposal works shall be charged to the municipality or person against which or whom the original order of the Secretary of the Environment was served.

(3) (i) Funds to pay the Service for services rendered under this subsection shall be raised in the case of a municipality under Title 9 of the Environment Article.

(ii) If the order is issued against a person, the Service shall bill the person for the full cost of services rendered.

(iii) If payment is not made within 60 days, the costs become a lien against the sewerage system or refuse disposal works if it is recorded and indexed as provided in this subtitle, and the Director shall refer the matter to the Attorney General for collection.

4. Section 3-109(d) of the Natural Resource Article also provides that:

(1) Upon failure of a municipality or person to comply with an order of the Secretary of the Environment to extend or alter a sewerage system or refuse disposal works as provided in Title 9 of the Environment Article, the Secretary of the Environment shall direct the Service to make alterations or extensions to the systems or works, or install a new system or works as the Secretary of the Environment deems necessary to correct the improper conditions.

(2) Except as provided in subsection (e) of this section, upon receipt of the directive from the Secretary of the Environment, the Service shall assume jurisdiction over the systems or works and make the alterations, extensions, or new construction required to comply with the directive of the Secretary of the Environment. All costs, including legal fees incidental to assuming jurisdiction over the system or works, shall be charged to the municipality or person against which or whom the order of the Secretary of the Environment was issued.

(3) Funds to pay the Service for costs incurred as a result of actions taken under this subsection may be raised as provided in Title 9 of the Environment Article. If the order was against a person, the Service shall charge the person with the cost of making the necessary improvements to comply with the directive of the Secretary of the Environment. If the person fails to pay within 60 days, the cost becomes a lien against the property served if it is recorded and indexed as provided in this subtitle, and the matter shall be referred to the Attorney General for collection.

5. Finally, § 3-109(e) of the Natural Resources Article provides:

(1) In the event the Service determines, at any time, that it will be unable to recoup all or a portion of its costs from the municipality or persons subject to the order of the Secretary of the Environment, the Service shall provide to the Secretary a full accounting of all costs incurred or anticipated to be incurred by it in complying with the Secretary's directive.

(2) Within 30 days of receipt of the accounting, the Secretary may request that the Service provide additional information.

(3) Within 90 days of receipt of the accounting or, when applicable, the additional information, the State shall pay to the Service the full amount of the Service's costs that are not paid or reasonably expected to be paid by the municipality or persons.

(4) (i) The State's payment of any amount to the Service does not preclude the State from seeking or obtaining reimbursement from the municipality or persons subject to the order of the Secretary.

(ii) The Service shall cooperate fully with the Secretary in seeking reimbursement from the municipality or persons.

FACTUAL BACKGROUND

6. The Mayor and City Council of Baltimore ("Baltimore City") applied for, and the Department established conditions and requirements and authorized Baltimore City, pursuant to Title 9, subtitle 3 of the Environment Article and NPDES Discharge Permit Number MD0021555, State Discharge Permit Number 15-DP-0581A (effective May 1, 2018; modified January 1, 2020; expires April 30, 2023) ("Back River Discharge Permit"), to discharge from the Back River Wastewater Treatment Plant ("Back River WWTP" or the "Plant"), located at 8201 Eastern Avenue, Baltimore, Maryland.

7. The Back River Discharge Permit (a) details the actions that Baltimore City is required to take to operate the Back River WWTP, and (b) limits Baltimore City's discharges of

pollutants to (i) Outfall 001A in the Back River, and (ii) Outfall 002A at Bear Creek. The Back River, which is designated as Use II waters protected for estuarine and marine aquatic life, then flows to the Chesapeake Bay.

8. On or about June 16, 2021, September 20, 2021, and December 29, 2021, the Department conducted inspections at the Back River WWTP. During these inspections, and as a result of reviewing information and materials submitted by Baltimore City before and after these inspections in accordance with the terms of the Permit, the Department observed extensive violations of General and Special Conditions contained in the Back River Discharge Permit.¹

9. On March 22, 2022, the Department conducted an additional inspection of the Back River WWTP. This inspection revealed a precipitous decline of the functioning of several critical processes at the Plant in comparison with prior Department inspections. The March 22, 2022, inspection revealed significantly increased noncompliance with the Back River Discharge Permit that is causing new or increased unpermitted discharges to Back River. Additional data from Discharge Monitoring Reports submitted by Baltimore City indicate monthly violations of total suspended solids (“TSSs”), total nitrogen, and total phosphorus.

10. Specifically, the March 22, 2022, inspection report revealed that:

a. Only 2 of the 11 primary settling tanks (“PSTs”) were in service, and 1 of the 2 operating PSTs requires maintenance to function properly. The Back River WWTP does not have sufficient PST capacity to treat its primary waste stream;

¹ As a result of the extensive violations of General and Special Conditions contained in the Back River Discharge Permit observed by the Department, on January 21, 2022, the Department filed an action against Baltimore City under Title 9, subtitle 3 of the Environment Article in the Circuit Court for Baltimore City, Case No. 24-C-22-000386.

b. Denitrification filters (“DN Filters”) were not functioning as designed because of the presence of a high solids concentration in the DN Filter influent. The Plant has 52 DN Filters arranged in 4 quads of 13 DN Filters each. Quads 1, 2 and 4 are not functioning properly because they are underwater. Additionally, the 13 DN Filters in Quad 4 are not functioning properly because they require various mechanical maintenance. These improperly functioning DN Filters are causing DN Filter influent to bypass permit required Enhanced Nutrient Reduction (“ENR”) treatment. In addition, the Department observed the presence of hydrogen sulfite (sewer gas) at the DN Filters which indicates operational or treatment process deficiencies; this is possibly related to incorrect methanol dosing;

c. January 2022 concentrations of TSS in DN Filter influent ranged between 31 and 292 mg/L. This indicates that the solids settling processes are failing. These high concentrations are causing intermittent and chronic clogging of the DN Filter system;

d. Significant algal and vegetation have grown on the weirs of the secondary clarifiers. This has caused the short circuiting of the system and likely negatively impacts TSS concentration in the Plant’s treatment train wastewater;

e. Significant amounts of solids have accumulated in the secondary clarifiers. This accumulation is decreasing the quality of the Plant’s final effluent.

f. Significant amounts of vegetation (*e.g.*, reed grasses) have grown and are established in the secondary clarifiers. This is preventing the proper functioning of these clarifiers; and

g. Significant amounts of vegetation (*e.g.*, reed grasses) have grown and are

established in the biological reactors. This is preventing the proper functioning of these reactors.

11. The Department has determined that the decline in the proper maintenance and operation of the Plant risks catastrophic failures at the Plant that may result in environmental harm as well as adverse public health and comfort effects.

12. Therefore, pursuant to § 9-252(a) of the Environment Article, to prevent or correct pollution of the waters of the State and to ensure the Back River WWTP is operated in a manner that will protect public health and comfort, the Secretary Grumbles ordered Baltimore City on March 24, 2022, to operate the Back River WWTP in compliance with all terms of the Back River Discharge Permit, including, but not limited to, providing an adequate number of operating staff that are qualified to carry out the operations, maintenance, and testing functions required to ensure compliance with the Back River Discharge Permit, and to cease all unpermitted discharges from the Back River WWTP. The Secretary further ordered Baltimore City to make all necessary and appropriate alterations to the Back River WWTP and its operations in order to comply with the March 24, 2022, order, and within 48 hours of service of the order, to submit to the Department sufficient documentary evidence that the Back River WWTP is operating in compliance with all terms of the Back River Discharge Permit and that it has ceased all unpermitted discharges.

13. On March 26, 2022, more than 48 hours after service of the March 24, 2022, order, the Department conducted a follow-up inspection of the Back River WWTP. The Department documented that the corrective actions identified in the March 22, 2022, inspection have not been completed, and extensive violations of General and Special Conditions contained in the Back River Discharge Permit continue unabated.

14. As of the date of this Directive, Baltimore City has failed to comply with the March 24, 2022, order and to operate the Back River WWTP in compliance with all terms of the Back River Discharge Permit and cease all unpermitted discharges from the Back River WWTP.

DIRECTIVE TO THE SERVICE

15. Pursuant to § 3-109(c) and § 3-109(d) of the Natural Resource Article, the Secretary hereby DIRECTS that the Service take charge of the Back River WWTP, including its operations, maintenance, and improvements functions, in order to work with Baltimore City to ensure that Baltimore City meets the following objectives: protecting public and environmental health; abating any further nuisance; providing appropriate levels of qualified staff; conducting appropriate maintenance, improvements, and modifications; operating the Back River WWTP in compliance with all terms of the Back River Discharge Permit; and ceasing all unpermitted discharges from the Back River WWTP.² The Service shall work with Baltimore City to the extent it deems practicable, but in any event, shall achieve the aforementioned objectives with the means and methods the Service, in its discretion, deems most effective and efficient. Specifically, the Service shall take actions to ensure that the Back River WWTP is operated in compliance with all terms of the Back River Discharge Permit and cease all unpermitted discharges from the Back River WWTP, which shall include:

- a. Immediately commencing action to correct the deficiencies identified in Paragraph 10.a. through g. of this Directive;

² Nothing in this Directive imposes liability on the Service under Title 9, subtitle 3 for violations of the Back River Discharge Permit.

- b. Immediately begin assessing the adequacy of both the number and qualifications of Plant staff in order to provide a recommendation to Baltimore City and the Department on the adequate number of qualified operating staff that are necessary to carry out the operations, maintenance, and testing functions required to ensure compliance with the Back River Discharge Permit; and
- c. Identifying and implementing all necessary and appropriate alterations to the Back River WWTP and its operations and maintenance, including, if necessary, the retaining of additional workers to temporarily supplement staffing at the Back River WWTP.

16. The Secretary further DIRECTS the Service to undertake a comprehensive evaluation and assessment of the Back River WWTP's operation, maintenance, staffing, and equipment and, by June 6, 2022, to submit a report to the Department of the Service's findings and recommendations, including a comprehensive list of needed improvements, ranked by their impact on compliance with discharge permit effluent limitations.

17. The Secretary further DIRECTS the Service to abide by any amendments or modifications to this Directive issued by the Secretary of Environment if the Secretary believes any such amendment or modification is necessary to protect human and environmental health.

18. The Secretary further DIRECTS the Service to seek recoupment as referenced in § 3-109 of the Natural Resources Article and may record and index one or more liens against Baltimore City, and any other responsible parties, assigns, owners, or operators.

19. The Secretary further DIRECTS the Service to complete all tasks in this Directive until the Secretary notifies the Service that this Directive is terminated.

STATE OF MARYLAND,
DEPARTMENT OF THE ENVIRONMENT



Benjamin Grumbles, Secretary

Date March 27, 2022

EXHIBIT C



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

CERTIFIED MAIL/ELECTRONIC MAIL

Yosef Kebede, Head
Bureau of Water and Wastewater
Baltimore City Department of Public Works
200 Holliday Street
Baltimore, Maryland 21202

Re: Back River Wastewater Treatment Plant, AI# 8449, 15-DP-0581A
Information Request

Dear Mr. Kebede:

The Maryland Department of the Environment (the “Department”) acknowledges the recent corrective actions that the Baltimore City Department of Public Works (the “City”) has implemented at the Back River Wastewater Treatment Plant (the “Back River WWTP”) to address operational and mechanical deficiencies. However, the City must expedite its retention of sufficient qualified staff and conduct all appropriate work to bring all of the essential processes and units into efficient operation in order to ensure compliance with the Back River WWTP’s discharge permit, State Discharge Permit No. 15-DP-0581A.

The Department has met with City personnel on several occasions and has reviewed the following documents submitted by the City:

- the letter from Yosef Kebede to Lee Currey, dated September 7, 2021;
- the “Strategic Plan for MDE Compliance,” undated, submitted on September 17, 2021;
- the “Strategic Plan for MDE Compliance at Back River Wastewater Treatment Plant,” undated, submitted on October 7, 2021;
- the letter from Michael Hallmen to Ron Wicks, dated October 20, 2021;
- the “Progress Report,” dated November 15, 2021;
- the email from Michael Hallmen to Sharon Talley, dated November 22, 2021 re: “Operator Certifications - PWWTP and BRWWTP,”
- the “BRWWTP Progress Report,” dated November 30, 2021;
- the “Back River WWTP Plant Operational Assessment,” undated, submitted on December 20, 2021;
- the “BRWWTP Progress Report,” dated January 5, 2022;
- the “BRWWTP Progress Report,” dated January 15, 2022;
- the “Back River Operation Changes.xlsx” and the “Back River status spreadsheet.xlsx,” submitted on January 29, 2022; and
- the “220211 Back River status spreadsheet.xlsx,” submitted on February 11 and 15, 2022.

Mr. Yousef Kebede, AI# 8449
Back River WWTP

The Department's review has raised significant concerns about (a) the City's prioritization of projects, (b) long completion deadlines, and (c) the absence of a full treatment train engineering report.

This letter serves as a request for additional information on the prioritization of projects and the City's target completion dates of projects intended to bring the Patapsco WWTP into permit compliance on the following topics:

- a. Adequate Staffing
- b. Primary Settling Tank Cleaning, Maintenance, & Repair
- c. Enhanced Nutrient Reduction & Denitrification Filters
- d. Sand Filter Rehabilitation
- e. Suspended Solids Reduction
- f. Capital Project List
- g. Third-Party Certified Engineering Evaluation & Report
- h. Industrial Stormwater Discharge Permit
- i. Plant Tour & Meeting

The Department's request for additional information is attached hereto as "Attachment A." Obtaining this information from the City is necessary for the Department to understand the scope and nature of the short, intermediate, and long-term actions required to operate the plant efficiently now, tomorrow, and into the future.

The Department appreciates the City's continued cooperation in this matter. If you have any questions, please do not hesitate to contact Ms. Sharon Talley, Program Manager, Compliance Program at (410) 537-3510 or by email at sharon.talley@maryland.gov.

Sincerely,



D. Lee Currey (Mar 4, 2022 12:52 EST)

D. Lee Currey, Director
Water and Science Administration

DLC:ldr

Enclosures (via electronic mail only)

cc: Alice Volpitta, Baltimore Harbor Waterkeeper, Blue Water Baltimore
Jonathan E.C. May, Assistant Attorney General
Nathan P. Short, Assistant Attorney General

ATTACHMENT A

Back River WWTP Requested Information

(March 3, 2022)

a. Adequate Staffing

Baltimore City (the “City”) has had difficulty in recent years recruiting and retaining employees at the Back River Wastewater Treatment Plant (“Back River WWTP”). In the summer of 2021, the Back River WWTP had a vacancy rate of 25%.

Within 30 days, provide the following information regarding plant personnel

- the optimum number of permanent staff necessary for each of the major process units (e.g., primary clarification, activated sludge, etc.) to ensure the plant can operate efficiently and produce effluent quality as designed,
- the cost of employing the optimum number of permanent staff to efficiently operate the plant,
- the number of temporary staff currently working at each major process unit,
- the remaining vacancies for permanent positions in each of the major process unit, and
- the webpages where job postings are located, and the anticipated dates that the optimum number of permanent staff will be in place at each of the major process units.

Additionally, as detailed in the “Operators Certification 2021-2022-PWWTP” attachment to the November 22, 2021 email regarding “Operator Certifications - PWWTP and BRWWTP,” many of the superintendents and operators have temporary certifications.

Within 14 days, update and submit to the Department the attached “211112 Back River Operators Cert.status.xlsx” spreadsheet.¹

The Board of Waterworks & Waste Systems Operators Board (“WWSO”) has also informed the Department that the City submits confusing or incomplete applications or payments, has a history of not providing proof of attendance for approved City-led training for operators, does not appear to provide any guidance on appropriate outside training, and generally does not appear to understand the certification process requirements.

¹ During the March 1, 2022 conference call, the Department was informed that the City had added approximately seven additional temporary certified operators and was likely to add three more in two weeks.

Within 30 days, please also provide a plan to obtain and maintain appropriate certifications for superintendents and operators.

b. Primary Settling Tank Cleaning, Maintenance, & Repair

The Back River WWTP was designed to treat a maximum of 400 million gallons per day (“MGD”), more than twice the estimated average daily receipt of wastewater (180 MGD). To do so, the Back River WWTP has eleven primary settling tanks (“PSTs”) in its wastewater treatment chain. Assuming that each PST has a proportional treatment capacity of the plant’s maximum treatment capacity, each PST can treat 36.36 MGD (400 MGD / 11 PSTs). In 2021, the Back River WWTP’s average flow was approximately 114 MGD, which is only 63% of its average design capacity.

The 220211 Back River Status Spreadsheet.xlsx states that

- a. “3 [PSTs are] currently functioning,”
- b. “[t]wo more [will] be in service with [sic] two weeks,”
- c. “funds [have been] procured for synagro [sic] to clean a third PST,” and
- d. “coupled with SC 954 will bring all 11 PST’s into service.”

The Back River WWTP does not presently have sufficient PST treatment capacity for an extreme wet weather event. Therefore, the Back River WWTP continues to violate General Condition III(B)(3)(a) of the Back River Discharge Permit, as it has failed to operate the Back River WWTP efficiently to minimize upsets and discharges of excess pollution, and General Condition III(B)(4)(b) as it has failed to “take all reasonable steps to minimize any adverse impact to the waters of this State, human health or the environment.”

Within 30 days, provide a detailed description of each PST with

- a. the present operational status,
- b. any maintenance, repair, or replacement activities that are necessary to place it in service, and
- c. the date by which it will be placed in service².

Within 30 days, provide also

- a. the projected cost to bring all PSTs into service,

² During the March 1, 2022 conference call, the Department was informed that the City would repair two PSTs in 90 to 120 days (May 30, 2022 to June 29, 2022).

- b. the minimum number of PSTs required to operate the plant as designed and to meet discharge permit effluent limits,
- c. the anticipated date that a sufficient number of PSTs will be in service to operate the plant as designed and to meet discharge permit effluent limits, and
- d. a PST maintenance and rotation plan, specifying the frequency and order that PSTs will be rotated out of service for maintenance and repair to optimize PST performance and service life.

c. Enhanced Nutrient Reduction & Denitrification Filters

While the Back River WWTP includes an Enhanced Nutrient Removal (“ENR”) process to treat nitrogen and phosphorus pollution in the wastewater, it exceeded the concentration-based annual loading limits for both total nitrogen (“TN”) and total phosphorus (“TP”) in 2021.

Poor ENR performance at the Back River WWTP is largely a result of insufficient solids removal from upstream processes clogging the denitrification filters (“DN Filters”) and inadequate control and maintenance of the DNFs. *See Back River WWTP Plant Operational Assessment,* undated, submitted on December 20, 2021, at 4.

Although Baltimore City has implemented several short-term corrective actions to improve ENR performance, it appears likely that the Back River WWTP will not meet effluent nutrient limitations in the near future.

The January 5, 2022 BRWWTP Progress Report identifies the completion of the engineering review of the Denitrification Facility operations “with recommended repairs for optimal performance” review. However, the February 11 and 15, 2022 Back River status spreadsheet includes no recommendations or time-frame for completion of this project.

Within 7 days, provide appropriate reports from the “data dashboard” sufficient to show each pollutant’s concentration throughout the full treatment process.

Within 30 days, provide a detailed description of each DN Filter, including:

- a. the present operational status,
- b. any maintenance, repair, or replacement activities that are necessary to operate the DNF efficiently, and
- c. the date by which improvements to the DN Filters will be completed.

Within 30 days, provide also:

- a. a report regarding DN Filters operations, including recommendations for improvements and a schedule for completion³,
- b. the projected cost to bring the DN Filters into service,
- c. the minimum number of DN Filters required to operate the plant as designed and to meet discharge permit effluent limits,
- d. the anticipated date that a sufficient number of DN Filters will be in-service to operate the plant as designed and to meet discharge permit effluent limits.

d. Sand Filter Rehabilitation

In order to treat the Back River WWTP's 2021 114 MGD average flow, the plant has 48 sand filters in its wastewater treatment chain. The 220211 Back River Status Spreadsheet.xlsx states that, of the plant's 48 sand filters, only "15 [are] currently operational."

With only a third of the sand filters operational, the plant may not have sand filter treatment capacity for the average flow or extreme wet weather events. The City has not provided a date by which the other 33 sand filters will be operational.

Within 30 days, provide:

- a. a report regarding sand filter operations, including recommendations for improvements and a schedule for completion⁴,
- b. the projected cost to bring the sand filters into service,
- c. the minimum number of sand filters required to operate the plant as designed and to meet discharge permit effluent limits,
- d. the anticipated dates⁵ by which a sufficient number of sand filters will be in-service to operate the plant as designed and to meet discharge permit effluent limits, and

³ During the March 1, 2022 conference call, the Department was informed that the City needed to re-automate the DN Filters and would do so in 30 to 45 days (March 31, 2022 to April 15, 2022).

⁴ During the March 1, 2022 conference call, the Department was informed that Ace Construction would provide a quote to the City by March 11, 2022.

⁵ During the March 1, 2022 conference call, the Department was informed that the City would have 20 additional sand filters in service by September 2022.

- e. the anticipated date of completion of the sand filter capital improvement project.⁶
- e. Suspended Solids Reduction

Milestones for significant projects necessary to achieve compliance with total suspended solids (“TSS”) are identified in the October 7, 2021 strategic plan for the Back River WWTP as “immediate” and “long-term.” In addition to the rehabilitation of sand filters, the City has explained, during the February 15, 2022 conference call, that reducing total suspended solids (“TSS”) will have a “significant impact” on the plant’s ability to achieve compliance with its discharge permit effluent limits.

The most recently reviewed Discharge Monitoring Reports (“DMRs”) for December 2021 indicate that the plant experienced six total phosphorus (“TP”) excursions, including violations of monthly average and daily maximum loading and concentration effluent limits. Further, for the full year of 2021, the plant exceeded its TSS annual loading limit by more than 2.7 million pounds. For the same year, the plant exceeded its TN and TP concentration-based limits by approximately 622,000 and 84,000 pounds, respectively.

The 220211 Back River Status Spreadsheet.xlsx designates the biosolids (December 31, 2025 completion date) and egg digester rehabilitation (no planned completion date) projects as “Long Term” projects. The Department is concerned that the plant will continue to experience effluent violations until such time that these major projects are completed.

Within 30 days, provide accelerated schedules for the completion of the biosolids and egg digester rehabilitation projects.

- f. Capital Project List

Within 30 days, provide the Department with a full list of all capital improvement projects related to the operation of the Back River WWTP. For each project, include the sanitary contract number, the names of all vendors, and all categories contained in 220211 Back River status spreadsheet.xlsx.

For each project, include:

- a. the date the project was first identified,
- b. the date the project was advertised,
- c. the date a notice to proceed was issued,

⁶ During the March 1, 2022 conference call, the Department was informed that the City would completely rehabilitate all of the sand filters in five years (March 1, 2027).

- d. the names of all vendors,
- e. the sanitary contract number,
- f. the budget amount, and
- g. the following categories contained in the 220211 Back River status spreadsheet.xlsx:
 - i. planned completion date,
 - ii. present estimated completion date,
 - iii. actual completion date,
 - iv. percent completed,
 - v. funding status,
 - vi. progress, and
 - vii. timeframe.

g. Third-Party Certified Engineering Evaluation & Report

Within 90 days, provide the Department with a third-party certified engineering evaluation and report for the plant's operation and equipment. The report shall include a comprehensive list of needed improvements, ranked by their impact on compliance with discharge permit effluent limits.

The Department intends that a negotiated resolution of the pending litigation will require the implementation of the findings and recommendations of this third-party certified engineering evaluation report.

h. Industrial Stormwater Discharge Permit

Within 14 days, provide a detailed description of all the actions taken in response to the June 25, 2021 inspection and report regarding the plant's compliance with its 12-SW permit authorization.

i. Plant Tour & Meeting

Please provide three dates in March 2022 for the City to provide a tour of the Back River WWTP with a follow up meeting regarding the engineering plan details and schedule.

EXHIBIT D



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

APR 11 2018

CERTIFIED MAIL

Mr. Marshall Phillips, Plant Manager
Wastewater Facilities Division
City of Baltimore, Department of Public Works
Bureau of Water and Wastewater
Back River Wastewater Treatment Plant
8201 Eastern Boulevard
Baltimore, Maryland 21224

RE: Discharge Permit for the Back River WWTP
State Discharge Permit 15-DP-0581, NPDES Permit MD0021555

Dear Mr. Phillips:

Enclosed is the above discharge permit with the effective date indicated on the cover page. The permittee is responsible for complying with all permit conditions. You are therefore advised to read the permit carefully and become thoroughly familiar with the requirements in order to maintain compliance with the permit.

The Enhanced Nutrient Removal (ENR) upgrade schedule listed in the permit includes deadlines for the construction completion and the corresponding effective date of the nutrients limits. The annual maximum loading rate limits for Total Nitrogen, Total Phosphorus and Total Suspended Solids (TSS) are included in the permit. Attached please find a copy of blank and sample forms for your use to calculate monthly load, year-to-date cumulative load and annual maximum load for these parameters. At the end of each calendar year, the permittee will be required to fill out and submit this form along with the Discharge Monitoring Report (DMR) for the month of December. You may contact the Project Manager to obtain this form in an electronic version (EXCEL SPREADSHEET).

Your facility has been approved by MDE to electronically submit Discharge Monitoring Report (DMR) through NetDMR. Therefore you are required to submit monthly DMRs by the 28th of the following month and all other documents as listed in the discharge permit electronically through NetDMR. Should you encounter problems in electronic submission for any month, please consult the MDE's Compliance Program by calling at (410) 537-3510 to avoid missing the deadline for submission of the above stated documents.

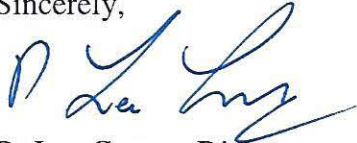
Mr. Marshall Phillips, Plant Manager
Page 2

You will also find enclosed a copy of the Federal Register published on August 28, 2017 with final rule to update the Code of Federal Regulations (CFR), Title 40, Part 136 - "Guidelines Establishing Test Procedures for Analysis of Pollutants" which is in effect from September 27, 2017. For future reference, please be advised to visit the U.S Government Publishing Office (USGPO) website (http://bit.ly/40CFR_Part136, this link is case-sensitive) regularly to obtain updated guidelines. Unless otherwise specified, the most updated guidelines in 40 CFR Part 136 are required to be used for the analyses of pollutants specified in this permit.

In addition, we have also enclosed a copy of the table of the Minimum Monitoring Requirements, a copy of Department's "Toxic Pollutant Monitoring Protocol and Reporting Requirements for Toxic Chemical Testing Analytical Data (amended on 05/18/2011)" a copy of Effluent Biotoxicity Testing Protocol for Industrial and Municipal Effluents, and a copy of the WWTP Effluent Toxic Chemical Monitoring Data Transmittal Cover Sheet.

If you have any questions, please contact Mahendra Chawla, Project Manager, Surface Discharge Permits Division, at (410) 537-3679.

Sincerely,



D. Lee Currey, Director
Water and Science Administration

Enclosures

cc: Mr. Mark Smith, U.S. Environmental Protection Agency (through electronic copy)
Ms. Leana S. Wen, Commissioner, Baltimore City Health Department, 1001 E. Fayette Street, Baltimore, Maryland 21202
Compliance Program's Central Division Chief
Ms. Chantelle Watkins (Permit cover page only)
Mr. Bill Lee (through electronic copy)
Mr. Matt Rowe, WSA
Mr. Dennis Rasmussen



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor
Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

DISCHARGE PERMIT

NPDES Discharge Permit Number:	MD0021555	State Discharge Permit Number:	15-DP-0581
Effective Date:	05/01/2018	Expiration Date:	04/30/2023
Modification Date:	(Not applicable)	Reapplication Due Date:	10/31/2021

Pursuant to the provisions of Title 9 of the Environment Article, Annotated Code of Maryland, and regulations promulgated thereunder, and the provisions of the Clean Water Act, 33 U.S.C. Section 1251 et seq., and implementing regulations 40 CFR Parts 122, 123, 124 and 125, the Department of the Environment hereby establishes conditions and requirements pertinent to the wastewater treatment plant and collection system and authorizes:

Mayor and City Council of Baltimore
City Hall, 100 North Holiday Street
Baltimore, Maryland 21202

TO DISCHARGE FROM: Back River Wastewater Treatment Plant

LOCATED AT: 8201 Eastern Boulevard, Baltimore County
Baltimore, Maryland 21224

THROUGH OUTFALL: 001A -- Facility Effluent to Back River
002A -- Facility Effluent discharge to High Head Lake at the Sparrows Point, Trade Point Property, and from there, is pumped to the existing outfalls to Bear Creek

TO: the Back River and Baltimore Harbor, designated as Use II waters protected for Estuarine and Marine Aquatic Life; in accordance with the following special and general conditions and a map incorporated herein and made a part hereof.

I. DEFINITIONS

- A. "Ambient temperature" of the effluent receiving stream means the water temperature that is not impacted by a point source discharge, and it shall be measured in areas of the stream representative of typical or average conditions of the stream segment in question.
- B. "Bypass" means the intentional diversion of pollutants from any portion of a treatment or collection facility.
- C. "BOD₅ (Biochemical Oxygen Demand)" means the amount of oxygen consumed in a standard BOD₅ test without the use of a nitrification inhibitor at 20 degree centigrade on an unfiltered sample.
- D. "Clean Water Act" means the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.
- E. "CFR" means the Code of Federal Regulations.
- F. "COMAR" means the Code of Maryland Regulations.
- G. "Department" means the Maryland Department of the Environment (MDE).
- H. Discharge Limits
 - 1. "Daily *maximum* (or *minimum*)" limitation means the *highest* (or *lowest*) allowable the daily averages in a calendar month. The daily discharge expressed as concentration (in mg/l) shall be calculated by dividing total of measurement readings by number of sample collected during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. The daily discharge expressed as loading rate (in pounds/day) is calculated by using this formula {daily average concentration (mg/l) x the same day total flow (in million gallons) x 8.34}.
 - 2. "Weekly average (*maximum* or *minimum*)" limitation means the *highest* or *lowest* allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week. Each of the following 7-day periods is defined as a calendar week: Week 1 is Days 1 - 7 of the month; Week 2 is Days 8 - 14; Week 3 is Days 15 - 21; and Week 4 is Days 22 - 28. *For weekly average maximum*, if the "daily discharge" on days 29, 30 or 31 exceeds the "weekly average" discharge limitation, MDE may elect to evaluate the last 7 days of the month as Week 4 instead of Days 22 - 28. *For weekly average minimum*, if the "daily discharge" on days 29, 30 or 31 is lower than the "weekly average" discharge limitation, MDE may elect to evaluate the last 7 days of the month as Week 4 instead of Days 22 - 28.

I. DEFINITIONS

3. “Monthly average *maximum* (or *minimum*)” limitation means the *highest* (or *lowest*) allowable monthly average concentration or waste load of a parameter over a calendar month. The monthly average is calculated as the sum of all daily discharges for a parameter sampled and/or measured in that calendar month divided by the number of days on which monitoring was performed.
4. “Minimum or maximum” limit means the lowest or highest allowable value measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling.
5. “Monthly loading rate (in pounds/month)” means the total load of a parameter calculated for that calendar month. It is calculated using this formula $\{(\text{monthly average concentration in mg/l}) \times (\text{Total monthly flow in Million Gallons}) \times 8.34\}$.
6. “Year-to-date cumulative load (pounds)” value means cumulative load of a pollutant in the effluent through each reporting month in a calendar year. It is calculated as a sum of the individual total monthly loads from January through the reporting month in a calendar year.
7. “Annual Maximum Loading Rate (in pounds/year)” limit means the maximum load allowed for a pollutant in the effluent to be discharged in a calendar year. The Year-to-date cumulative load (as defined above in Definition I.H.6) shall be used to determine the compliance status of this requirement.
8. “Monthly log mean (Monthly geometric mean)” limit means the highest allowable value calculated as the logarithmic or geometric mean of all samples taken in the calendar month. The geometric mean is the antilogarithm of the mean of the logarithms.

I. Discharge Monitoring

1. “Composite sample” means a combination of individual samples obtained at hourly or smaller intervals over a time period. Either the volume of each individual sample is proportional to discharge flow rates or the sampling interval (for constant volume samples) is proportional to the flow rates over the time period used to produce the composite.
2. “Grab sample” means an individual sample collected over a period of time not exceeding 15 minutes.
3. “Estimated flow” value means a calculated volume or discharge rate which is based on a technical evaluation of the sources contributing to the discharge including, but not limited to, pump capabilities, water meters, and batch discharge volumes.

I. DEFINITIONS

4. "Measured flow" value means any method of liquid volume measurement, the accuracy of which has been previously demonstrated in engineering practice, or for which a relationship to absolute volume has been obtained.
 5. "Recorded flow" means any method of providing a permanent, continuous record of flow including, but not limited to, circular and strip charts.
 6. "Monthly average flow" means the total flow for a calendar month divided by the number of days in the same month.
-
- J. "i-s (immersion stabilization)" means a calibrated device immersed in the effluent or stream, as applicable, until the temperature reading is stabilized.
 - K. "NetDMR" means a nationally-available electronic reporting tool, initially designed by states and later adapted for national use by EPA, which can be used by NPDES-regulated facilities to submit discharge monitoring reports (DMRs) electronically to EPA through a secure Internet application over the National Environmental Information Exchange Network (NEIEN). EPA can then share this information with authorized states, tribes, and territories.
 - L. "NPDES (National Pollutant Discharge Elimination System)" means the national system for issuing permits as designated by the Clean Water Act.
 - M. "Nondetectable Level" for total residual chlorine means a residual concentration of less than 0.10 mg/l as determined using either the DPD titrimetric or chlorimetric method or an alternative method approved by the Department.
 - N. "Outfall" means the location where the effluent is discharged into the receiving waters.
 - O. "Overflow" means any loss of wastewater or discharge from a sanitary sewer system, combined sewer system or wastewater treatment plant bypass (as defined in I.B) which results in the direct or potential discharge of raw, partially treated wastewater into the waters of the State.
 - P. "Permittee" means an individual or organization holding the discharge permit issued by the Department.
 - Q. "POTW" means a publicly owned treatment works.
 - R. "Sampling Point" means the effluent sampling location in the outfall line(s) downstream from the last addition point or as otherwise specified.
 - S. "Sanitary Sewer Overflow (SSO)" means a discharge of untreated or partially treated sewage from a separate sewer system before the sanitary wastewater reaches the headworks of a wastewater treatment facility, pursuant to COMAR 26.08.10.01.

I. DEFINITIONS

- T. “Significant Industrial User (SIU)” is defined as any industrial user (IU) that:
1. is subject to national categorical standards; and
 2. any other IU that:
 - a. discharges an average of 25,000 gallons per day or more of process wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater); or
 - b. contributes a process wastestream that makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW; or
 - c. is designated as such by the POTW on the basis that the IU has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement; or
 - d. is found by the POTW, the Department, or the Environmental Protection Agency (EPA) to have significant impact either individually or in combination with other contributing industries to the POTW, on the quality of the sludge, the POTW's effluent quality, or air emissions generated by the system.
- U. “TKN (Total Kjeldahl Nitrogen)” means organic nitrogen plus ammonia nitrogen.
- V. “TSS (Total Suspended Solids)” means the residue retained on the filter by an analysis done in accordance with Standard Methods or other approved methods.
- W. “Upset” means the exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

II. SPECIAL CONDITIONS

A.1 Effluent Limitations, Outfall 001A ^{(1) (2) (3)}

The quality of the effluent discharged by the facility at a discharge point location- 001A shall be limited at all times as shown below:

<u>Effluent Characteristics</u>	<u>Maximum Effluent Limits</u>					
	<u>Monthly Average Loading Rate, Pounds/day</u>	<u>Weekly Average Loading Rate, Pounds/day</u>	<u>Daily Average Loading Rate, Pounds/day</u>	<u>Monthly Average Concentration, mg/l</u>	<u>Weekly Average Concentration, mg/l</u>	<u>Daily Average Concentration, mg/l</u>
BOD ₅	11,000	16,000	N/A	10	15	N/A
TSS	11,000	16,000	N/A	10	15	N/A
Total Ammonia Nitrogen as N (5/1 - 10/31)	2,200	3,300	N/A	2.0	3.0	N/A
(11/ - 4/30)	5,529	N/A	N/A	5.1	N/A	N/A
Total Phosphorus	220	330	N/A	0.20	0.30	N/A

<u>Effluent Characteristics</u>	<u>Maximum Effluent Limits</u>		
	<u>Total Monthly Loading Rate, Pounds/Month</u>	<u>Annual Maximum Loading Rate, Pounds/Year</u>	<u>Monthly Average Concentration, mg/l</u>
TSS ⁽⁴⁾ _a	REPORT	3,959,228 lbs/year	REPORT
Total Phosphorus-P ^{(4) (6) (7)} _a (5/1- 10/31)	REPORT	6,652 lbs/month	REPORT
Total Phosphorus-P ^{(4) (5)(6)(7)} _a	REPORT	79,277 lbs/year	REPORT
Total Nitrogen-N ^{(4) (6)(7)} _a (5/1- 10/31)	REPORT	99,782 lbs/month	REPORT
Total Nitrogen-N ^{(4) (5)(6) (7)} _a	REPORT	1,582,055 lbs/year	REPORT
Total Polychlorinated Biphenyls (tPCBs) ⁽⁴⁾ _b	REPORT Grams/Quarter (Quarterly Average) REPORT Grams/Year (Annual Maximum)		REPORT ng/l (Quarterly Average) REPORT ng/l (Annual Average)

<u>Effluent Characteristics</u>	<u>Effluent Limits</u>	
	<u>Maximum</u>	<u>Minimum</u>
E. coli	126 MPN/ 100 ml monthly geometric mean	N/A
Total Residual Chlorine ⁽⁸⁾	0.011 mg/l	N/A
pH	8.5	6.5
Dissolved Oxygen (All Year) (2/1 – 5/31)	N/A N/A	5.0 mg/l at anytime 6.0 mg/l weekly average
WET Acute Toxicity ⁽⁹⁾	TUa < 1.00	N/A
WET Chronic Toxicity ⁽⁹⁾	TUc < 1.02	N/A

An annual average flow of 130.0 million gallons per day (mgd) was used in waste allocation calculations (expressed as waste loading rate limit), and this unit shall be used when reporting on the Discharge Monitoring Report (DMR) as required by General Condition III.A.2. Notification is to be provided to the Department at least 180 days before the annual average flow is expected to exceed this flow level or when the sum of flows from outfall 001A and 002A is expected to exceed 180.0 mgd. The facility shall meet an annual load limit of 2,192,800 lbs/yr for total nitrogen, 109,600 lbs/yr for total phosphorus and 8,548,254 lbs/yr for total suspended solids for flows from outfall 001A and 002A combined together. The ENR limits into effect on the effective date of this permit.

II. SPECIAL CONDITIONS

A.2 Effluent Limitations, Outfall 002A ⁽¹⁾⁽²⁾⁽³⁾

The quality of the effluent discharged by the facility at a discharge point location- 002A shall be limited at all times as shown below:

Effluent Characteristics	Maximum Effluent Limits					
	Monthly Average Loading Rate, Pounds/day	Weekly Average Loading Rate, Pounds/day	Daily Average Loading Rate, Pounds/day	Monthly Average Concentration, mg/l	Weekly Average Concentration, mg/l	Daily Average Concentration, mg/l
BOD ₅ (5/1-10/31)	8,340	12,520	N/A	20	30	N/A
BOD ₅ (11/1- 4/30)	12,520	18,770	N/A	30	45	N/A
TSS	12,520	18,770	N/A	30	45	N/A
Total Ammonia Nitrogen as N (5/1 - 10/31)	830	1,250	N/A	2.0	3.0	N/A
(11/1- 4/30)	2,130	N/A	N/A	5.1	N/A	N/A
Total Phosphorus	83	125	N/A	0.20	0.30	N/A

Effluent Characteristics	Maximum Effluent Limits		
	Total Monthly Loading Rate, Pounds/Month	Annual Maximum Loading Rate, Pounds/Year	Monthly Average Concentration, mg/l
TSS ⁽⁴⁾ _a	REPORT	4,589,026 See footnote 4 _(a) *	REPORT
Total Phosphorus-P ⁽⁴⁾ ⁽⁶⁾ ⁽⁷⁾ _a (5/1-10/31)	REPORT	15,353 lbs total (5/1- 10/31)	REPORT
Total Phosphorus-P ⁽⁴⁾ ⁽⁵⁾ ⁽⁶⁾ ⁽⁷⁾ _a	REPORT	30,363 lbs/year	REPORT
Total Nitrogen-N ⁽⁴⁾ ⁽⁶⁾ ⁽⁷⁾ _a (5/1-10/31)	REPORT	230,294 lbs total (5/1-10/31)	REPORT
Total Nitrogen-N ⁽⁴⁾ ⁽⁵⁾ ⁽⁶⁾ ⁽⁷⁾ _a	REPORT	610,748 lbs/year	REPORT
Total Polychlorinated Biphenyls (tPCBs) ⁽⁴⁾ _c	REPORT Grams/Quarter (Quarterly Average) REPORT Grams/Year (Annual Maximum)		REPORT ng/l (Quarterly Average) REPORT ng/l (Annual Average)

Effluent Characteristics	Effluent Limits	
	Maximum	Minimum
E. coli	126 MPN/ 100 ml monthly geometric mean	N/A
Total Residual Chlorine ⁽⁸⁾	N/A	N/A
pH	8.5	6.5
Dissolved Oxygen (All Year) (2/1 – 5/31)	N/A N/A	5.0 mg/l at anytime 6.0 mg/l weekly average

An annual average flow of 50.0 million gallons per day (mgd) was used in waste allocation calculations (expressed as waste loading rate limit), and this unit shall be used when reporting on the Discharge Monitoring Report (DMR) as required by General Condition III.A.2. Notification is to be provided to the Department at least 180 days before the annual average flow is expected to exceed this flow level or when the sum of flows from outfall 001A and 002A is expected to exceed 180.0 mgd. The facility shall meet an annual load limit of 2,192,800 lbs/yr for total nitrogen, 109,600 lbs/yr for total phosphorus and 8,548,254 lbs/yr for total suspended solids for flows from outfall 001A and 002A combined together. The ENR limits go into effect on the effective date of this permit.

II. SPECIAL CONDITIONS

Footnotes for limitations:

- (1) When this permit is renewed, the new limitations may not be equal to the above limitations.
- (2) There shall be no discharge of floating solids or visible foam other than trace amounts. See Special Condition II.M.
- (3) The permit may also be reopened in accordance with the requirements of MDE's Watershed Permitting Plan under which all discharge permits in a watershed are issued the same year.
- (4)
 - (a) The Back River (basin number 02130901) has been identified on the 303(d) list as impaired by PCBs in both, sediment (1998) and fish tissue (2008), sediments (1996), chlordane (1996), nitrogen and phosphorus (1996), chlorides (2012), and sulfates (2012).
Following Waste Load Allocations (WLAs) have been assigned:

For Outfall 001A to Back River, per Back River TMDL for 130.0 mgd flow*:

Total Nitrogen = 99,782 lbs/month (5/1-10/31) and 1,582,055 lbs/year*

Total Phosphorus = 6,652 lbs/month (5/1-10/31) and 79,277 lbs/year*

tPCB = 48.5 g/year

For 50.0 mgd flow thru Outfall 002A to Baltimore Harbor per Chesapeake Bay TMDL*:

Total Nitrogen = 230,294 lbs/ season (5/1-10/31) and 610,748 lbs/year*

Total Phosphorus = 15,353 lbs/season (5/1-10/31) and 30,363 lbs/year*

tPCB = 18.66 g/year

- * The facility shall meet an annual load limit of 2,192,800 lbs/yr for total nitrogen, 109,600 lbs/yr for total phosphorus and 8,548,254 lbs/yr for total suspended solids for flows from outfall 001A and 002A combined together. The ENR limits go into effect on the effective date of this permit.

This permit is in conformance with the "Chesapeake Bay TMDL for Nitrogen, Phosphorus and Sediment" established on December 29, 2010. When TMDLs for other remaining parameters are completed, limits may be imposed, after the public participation process, to incorporate any TMDL requirements. Until the facility's ENR upgrade to the treatment is complete and fully operational, the permittee is to operate the Biological Nutrient Removal (BNR) process on a year round basis. Total Nitrogen is the sum of ammonia-N, organic-N and (nitrite + nitrate)-N based on samples collected on the same day.

- (4)
 - (b) The TMDL for PCBs for Back River approved by the EPA on 10/1/2012, has included a tPCBs annual waste load allocation (WLA) of 48.5 grams/year (0.107 pounds/year) for Outfall 001A (that is based on the design flow of 130.0 mgd and the water column TMDL endpoint tPCBs concentration of 0.27 nanograms per liter (ng/l)).
 - (c) The TMDL for the Baltimore Harbor approved by the EPA on 10/1/2012, included a tPCBs WLA of 18.66 g/year (0.0411 pound/year) for the Back River WWTP Outfall 002A (that is based on the design flow of 50.0 mgd and the water column TMDL endpoint tPCBs concentration of 0.27 nanograms per liter (ng/l)).

The above stated WLAs of tPCBs included in the TMDL does not impose effluent limits for tPCBs in the discharge permit until the effluent tPCBs data collected after the completion of the ENR upgrade are evaluated by the Department. Upon completion of the ENR upgrade, if the facility's annual tPCBs load exceeds the WLA, the permittee shall submit a plan to the Department for approval to track the sources and Best Management Practice (BMP) implementation within 180 days of exceedence of the above stated annual load for tPCBs.

II. SPECIAL CONDITIONS

Footnotes for limitations, Continued:

- (5) The permittee shall operate the ENR facility in a manner that optimizes the nutrient removal capability of the facility as stipulated in the Grant Agreement for ENR upgrade. The first exceedence of the permit limit shall be counted and reported as daily exceedences beginning from the first exceedence, determined to the nearest day, through December 31. In addition, after any such exceedence, the permittee shall demonstrate to the Department's satisfaction that the facility is optimizing its nutrient removal capability, and neither the arrival of the next calendar year nor the issuance of a permit renewal during a period of noncompliance shall obviate continuance of any noncompliance status related to treatment optimization requirements.
- (6) At the end of each calendar year, the permittee shall comply with the *concentration-based* limitations for the Annual Maximum Loading Rate defined below or the *Tributary Strategy-based* loading rate limitation listed in above in the effluent limitations table, whichever is lower:
- (a) TN Limitation (lbs/year): $4.0 \text{ mg/l} \times \text{annual total flow (calendar year based in million gallons per year)} \times 8.34$. To the extent that the permittee alleges that temperature levels of 12 degrees C or lower have diminished the treatment system's capability of complying with this *concentration-based* loading rate limitation for Total Nitrogen, the permittee shall provide notification beginning with the calendar year report under the "Upset" provision in Section III.B.6 of this permit. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.
- (b) TP Limitation (lbs/year): $0.20 \text{ mg/l} \times \text{annual total flow (calendar year based in million gallons per year)} \times 8.34$.
- The details and results of all required annual calculations shall be submitted to the Department with the Discharge Monitoring Report for December. See Special Condition II.K for further details.
- The *concentration-based* loading requirements may be revised if the limits are determined to be impracticable based on actual performance and the Department re-opens the permit as a major modification (which requires public participation) to impose (an) alternate effluent limitation(s) or revised schedule.
- (7) The permittee may request that the permit be reopened and modified to include nutrient trading consistent with the most current "Maryland Policy for Nutrient Cap Management and Trading in Maryland's Chesapeake Bay Watershed" in effect at that time.
- (8) Total residual chlorine limitation of 0.011 mg/l shall be applicable, when chlorine or any chlorine-containing compound is used in any treatment process (es), including but not limited to disinfection, that could become a potential constituent of the effluent discharged from the Back River WWTP. The wastewater shall be dechlorinated to reduce effluent total residual chlorine concentration to the nondetectable level (See definition I.M).
- (9) TUa is defined as 100 divided by the LC₅₀ value resulting from the first 48 hours of a valid acute or chronic toxicity test. Compliance with the LC₅₀ requirements shall be determined through testing performed in accordance with Special Condition II.D. TUc is defined as 100 divided by the IC₂₅ value resulting from a valid chronic toxicity test. Compliance with the IC₂₅ requirements shall be determined through testing performed in accordance with Special Condition II.D.

II. SPECIAL CONDITIONS

B.(1) Minimum Monitoring Requirements:

The effluent characteristics listed below in Table B(1) shall be monitored at the sampling point (Definition I.R). If the sampling point is other than the outfalls- 001A and 002A, the permittee shall ensure that the effluent samples are representative of the effluent quality being discharged at the outfalls 001A and 002A.

<u>Effluent Characteristics</u>	<u>Monitoring Period</u>	<u>Measurement Frequency</u>	<u>Sample Type</u>
BOD ₅ ⁽¹⁰⁾	All Year	One/day	24-hour composite
Total Suspended Solids ⁽¹⁰⁾	All Year	One/day	24-hour composite
Total Ammonia Nitrogen as N ⁽¹⁰⁾⁽¹²⁾	All Year	One/day	24-hour composite
Total Phosphorus as P ⁽¹⁰⁾⁽¹³⁾	All Year	One/day	24-hour composite
Total Nitrogen as N ⁽¹⁰⁾⁽¹²⁾⁽¹³⁾	All Year	One/day	Calculated
(Nitrite + Nitrate) as N ⁽¹⁰⁾⁽¹¹⁾⁽¹²⁾	All Year	One/day	24-hour composite
Organic Nitrogen as N ⁽¹⁰⁾⁽¹¹⁾⁽¹²⁾	All Year	One/day	24-hour composite
Orthophosphate as P ⁽¹⁰⁾⁽¹¹⁾	All Year	One/week	24-hour composite
E. coli ⁽¹⁰⁾	All Year	One/day	Grab
Total Residual Chlorine ⁽¹⁰⁾⁽¹⁴⁾⁽¹⁵⁾	All Year	Three per day, One per shift	Grab
Dissolved Oxygen ⁽¹⁰⁾⁽¹⁵⁾	All Year	Three per day, One per shift	Grab
pH ⁽¹⁰⁾⁽¹⁵⁾	All Year	Three per day, One per shift	Grab
Cyanide, Free ⁽¹⁰⁾⁽¹⁶⁾	All Year	One/month	Grab
Chromium (Hex) ⁽¹⁰⁾⁽¹⁶⁾	All Year	One/month	Grab
Total Polychlorinated Biphenyls ⁽¹⁰⁾⁽¹⁶⁾ (tPCBs)	All Year	One/quarter	24-hour composite
Whole Effluent Toxicity ⁽¹⁰⁾⁽¹⁷⁾ Acute and Chronic	All Year	One/Quarter	24-hour composite
Flow ⁽¹⁰⁾⁽¹⁸⁾⁽¹⁹⁾	All Year	Continuous	Recorded ⁽¹⁹⁾
Total Monthly Flow ⁽¹⁰⁾⁽²⁰⁾	All Year	Monthly	Calculated ⁽²⁰⁾

II. SPECIAL CONDITIONS

B (1) Minimum Monitoring Requirements:

Footnotes for the monitoring requirements, continued:

- (10) "STORET" (short for STOrage and RETrieval) is a widely-used repository for water quality data reporting and monitoring. The STORET codes for the effluent characteristics described as limitations and/or monitoring requirements are: BOD₅ (00310), Total Suspended Solids (00530), Total Ammonia Nitrogen as N (00610), Total Phosphorus as P (00665), Total Nitrogen as N (00600), (Nitrite + Nitrate) as N (00630), Organic Nitrogen as N (00605), Orthophosphate as P (04175), E. coli (51040), Total Residual Chlorine (50060), Dissolved Oxygen (00300), pH (00400), Cyanide (Free) (00722), Chromium (Hex) (78247), tPCBs (79819), WET Acute Toxicity (TS000), WET Chronic Toxicity (TT000), Flow (50050), and Total monthly flow (82220).
- (11) This parameter (without effluent limitations) must be monitored, and it shall be reported on the Monthly Operating Report (MOR) as individual results and on the Discharge Monitoring Report (DMR) as monthly average concentrations.
- (12) Total nitrogen as N (in mg/l) is a calculated parameter as the sum of individual results for total ammonia nitrogen as N, organic nitrogen as N and (nitrite + nitrate) as N. All the nitrogen species must be sampled on the same day.
- (13) The permittee shall also calculate and report on the DMR the TN and TP total monthly loads (Definition I.H.5) plus year-to-date cumulative loads (Definition I.H.6) for the calendar year in question for the outfalls- 001A and 002A.

For each calendar year, the year-to-date cumulative loads of TN and TP for the month of December shall represent the total annual loads, and they must be incorporated toward complying with the respective annual maximum load limits. Refer to Special Condition II.K for "Reporting TN and TP total annual loads for compliance to the Concentration-based maximum annual loading rate limits".
- (14) The Minimum monitoring requirements of three per day (one per shift) grab samplings for total residual chlorine shall be applicable, when chlorine or any chlorine compound is used in any treatment process(es), including but not limited to disinfection, that could become a potential constituent of the effluent discharged from the Back River WWTP. The minimum level (quantification level) for total residual chlorine is 0.10 mg/l. The permittee may report all results below the minimum level as <0.10 mg/l. All results reported below the minimum level shall be considered in compliance.
- (15) The monitoring of parameters (total residual chlorine, pH and dissolved oxygen) by three per day – grab samplings shall be distributed on a daily basis during the entire the staffed period in accordance with the representative sampling requirements as stated in the General Condition III.A1.

II. SPECIAL CONDITIONS

Footnotes for the monitoring requirements, continued:

- (16) All toxic chemical monitoring required by this permit shall be performed in accordance with MDE's Water Management Administration Toxic Substance Analytical Protocol. This includes analytical methodology, detection levels, holding times, preservation methods, sample types and reporting.
- The permittee shall measure and report tPCBs in picograms/L (pg/L). To incorporate the TMDL of PCBs for Back River approved by the EPA on 10/1/2012, the effluent tPCBs monitoring and annual totals PCBs reporting shall be initiated upon completion and beginning operation of the ENR upgrades at Back River WWTP. The permittee shall use the approved EPA testing Methods in accordance with MDE's protocol titled "Reporting Requirements for Total PCBs (PCB Congeners) by EPA Method 1668 C or A". The tPCBs monitoring shall be once per quarter for at least one year beginning the ENR operation. The quarter shall end on March, June, September and December. The annual average concentration for tPCBs shall be calculated using the following formula:
- $$\text{Average Concentration (pg/l)} = 264172 \times \frac{\text{Total Annual Cumulative load discharged (Grams)}}{\text{Total Annual Flow (MG) at 001A and 001B}}$$
- Based on the tPCBs monitoring results, the Department will determine whether to continue tPCBs monitoring or change the tPCBs monitoring frequency after the tPCBs sources are identified and eliminated through BMP as stated in footnote 4_(b). Any changes to the effluent tPCBs limits and/or monitoring requirements shall be addressed through the permit modification process.
- (17) Whole Effluent Toxicity (WET) samples shall be collected quarterly , analyzed, and reported in accordance with the MDE Water Management Administration's "Effluent Biototoxicity Testing Protocol for Industrial and Municipal Effluents" and Special Condition II.D.
- (18) Flows shall be reported in millions gallons per day (mgd) to at least the nearest 10,000 gallons per day. (Example: A flow of 1,524,699 gallons per day shall be reported as 1.53 mgd.). For each calendar month, flows shall be reported on the MOR as daily individual results and on the DMR as monthly average (mgd) and daily maximum (mgd)).
- (19) Continuous electronic flow measurement and recording which can produce a permanent record are acceptable to the Department.
- (20) "Total monthly flow" is a calculated parameter equal to sum of the daily flow results in a calendar month. It shall be reported on the monthly DMR as Total monthly flow in millions gallons (MG) to at least the nearest 10,000 gallons. (Example: A flow of 1,524,699 gallons shall be reported as 1.53 MG).

II. SPECIAL CONDITIONS

B(2) Report Submittal Requirements

Report Description	Reporting Frequency	Report Submittal Deadline
Effluent Biomonitoring Study Plan and Toxic Chemical Testing Plan ⁽²¹⁾⁽²²⁾	See footnote - 22	See footnote - 22
Effluent Biomonitoring Study Report ⁽²¹⁾⁽²³⁾	See footnotes- 23 & 25	See footnote- 25
Effluent Toxic Chemical Testing Report ⁽²¹⁾⁽²³⁾⁽²⁵⁾	See footnotes – 24 & 25	See footnote- 25
Wastewater Capacity Management Plan (WCMP) ⁽²¹⁾⁽²⁶⁾	See footnote – 26	See footnote- 26
Flow Capacity Report (FCR) ⁽²¹⁾⁽²⁷⁾	See footnote - 27	See footnote- 27

- ⁽²¹⁾ If the permittee has selected a third party for submitting reports to the Department, the permittee must provide to the third party with a **document of authorization for report submission** which is required with the report.
- ⁽²²⁾ Within three months from the effective date of this permit, the permittee shall submit the Study Plans for effluent biomonitoring as well as toxic chemical testing and obtain approval from the Department. For further details, refer to Special Condition II.D.1 for Effluent Biomonitoring Study Plan and Special Condition II.F.1 for Effluent Toxic Chemical Testing Study Plan.
- ⁽²³⁾ After MDE's approval of the Effluent Biomonitoring Study Plan, the permittee shall perform the effluent biomonitoring study and submit the results in a comprehensive report to the Department as per requirements of the Special Condition II.D.
- ⁽²⁴⁾ After MDE's approval of the Effluent Toxic Chemical Testing Plan, the permittee shall perform the effluent toxic chemical testing and submit the results in a comprehensive report to the Department as per requirements of the Special Condition II.F.
- ⁽²⁵⁾ The reports (a) for each biomonitoring study test performed as per the Special Condition II.D.2 and (b) for each analytical testing for toxic chemicals performed as per Special Condition II.F.3 shall be submitted to the Department by a mail or attached and submitted to the Department along with DMR for the month during which the test was completed, using NetDMR tool no later than 28th of the month following the test completion month. (Example: If the test is completed in March, the comprehensive report shall be submitted with the March DMR no later than 28th April).
- ⁽²⁶⁾ Unless the permittee has previously submitted the WCMP to the Department; the permittee shall submit the WCMP **one time** within 90 (Ninety) days of the effective days of this permit.
- ⁽²⁷⁾ The permittee shall submit the FCR to the Department as per the Special Condition II.C. This report shall be submitted **once per year** along with the DMR for the month of December.

II. SPECIAL CONDITIONS

C. Wastewater Capacity Management

The permittee shall report the total cumulative flow for the each calendar year for the above referenced facility. The total cumulative flow shall be reported in million gallons for the entire calendar year to the nearest ten thousand gallons. The annual total cumulative flow determination shall be provided to the Department using NetDMR no later than January 28th of the following year.

Because the most recent three-year average flow for this facility is over 80% of its design capacity, unless it has already been submitted, a Wastewater Capacity Management Plan (WCMP) must be submitted to the Department using NetDMR no later than 90 days of the issuance date of this discharge permit.

In addition, the permittee shall also submit a “Wastewater Flow Capacity Report (WFCR)” and “worksheet for WFCR” for the previous calendar year to the Department using NetDMR tool no later than January 28th of each year. If the permittee has not previously submitted the WCMP or the annual WFCR, the first WFCR and “worksheet for WFCR” shall be submitted within 90 days from the effective date of this permit. The permittee can obtain the WCMP guidance document and forms from the Department’s web site links listed below: (a) <http://9nl.at/MD-CMPGuidance> for WCMP guidance document, (b) <http://9nl.at/MD-CMPFlowCapReport> for WFCR, (c) <http://9nl.at/MD-CMPWorksheet1> for WFCR’s Worksheet # 1, and (d) <http://9nl.at/MD-CMPWorksheet2> for WFCR’s Worksheet # 2 (these links are case-sensitive).

If the permittee prefers to provide the above documents in hard copies, they shall be provided to the Department postmarked by January 28th of the following year to the address below:

Attention: Calendar Year Total Cumulative Flow
WSA – Wastewater Discharge Permits Program
Maryland Department of the Environment
1800 Washington Boulevard, STE-455
Baltimore, MD 21230-1708

The permittee is advised to notify the Department at the above address immediately upon electronic submission of reports through NetDMR tool.

II. SPECIAL CONDITIONS

D. Biomonitoring Program

1. Within three months of the effective date of the permit, the permittee shall submit to the Department for approval a study plan to evaluate wastewater toxicity at Outfall 001A by using biomonitoring. Flow from Outfall-002A is used by Tradepoint Atlantic, LLC (formerly known as Sparrows Point Terminal, LLC) as process water and then discharged under the terms and conditions in NPDES No. MD0001201. Since Tradepoint Atlantic, LLC is required to monitor at their outfalls and since wastewater at Outfall-002A has received same treatment as Outfall-001A at Back River WWTP, no biomonitoring requirements are set for Outfall-002A in the Back River WWTP discharge permit. Testing for Outfall-001A shall be initiated no later than three months following the Department's acceptance of the study plan or according to an approved schedule in the study plan. The study plan should include a discussion of:
 - a. wastewater and production variability
 - b. sampling & sample handling
 - c. source & age of test organisms
 - d. source of dilution water
 - e. testing procedures/experimental design
 - f. data analysis
 - g. quality assurance/quality control
 - h. report preparation
 - i. testing schedule
2. The testing program shall consist of quarterly definitive chronic testing. This testing shall be initiated within the first quarter following the Department's acceptance of the study plan.

Testing shall include the sheepshead minnow (*Cyprinodon variegatus*) or inland silverside (*Menidia beryllina*) larval survival and growth tests and mysid shrimp (*Americamysis bahia* AKA *Mysidopsis bahia*) survival, growth, and fecundity tests. Testing must include one vertebrate species and one invertebrate species. Test results shall be expressed as NOEC, LOEC, ChV, and IC₂₅.
3. The samples used for biomonitoring shall be collected at the same time and location as the samples analyzed for the effluent limitations and monitoring requirements for this outfall. For chlorinated effluents, samples shall be collected after dechlorination. The permittee shall collect 24-hour flow-proportioned composite samples unless the Department has given prior approval of an alternative sampling type.

II. SPECIAL CONDITIONS

4. The following EPA document discusses the appropriate methods:

For Estuarine Receiving Stream: Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms
Third Edition, EPA-821-R-02-014, October 2002
5. Test results shall be submitted to the Department within one month of completion of each set of tests.
6. Test results shall be reported in accordance with the Department's "Effluent Biototoxicity Testing Protocol for Industrial and Municipal Effluents, Appendix E, Reporting Requirements for Effluent Biomonitoring Data," 12/4/12.
7. As a minimum, the reported chronic results shall be expressed as NOEC, LOEC, ChV, and IC₂₅.
8. If a 50% mortality or greater occurs in one or more effluent concentrations during the first 48 hours of the chronic tests, 48-hour LC₅₀s shall be calculated and reported along with the chronic results
9. If testing is not performed in accordance with MDE-approved study plan, additional testing may be required by the Department.
10. If the test results of any two consecutive valid toxicity tests show acute or chronic toxicity (LC₅₀ equal to or less than 100% for acute tests and an IC₂₅ equal to or less than the in-stream waste concentration for chronic tests), the permittee shall repeat the test within 30 days to confirm the findings of acute or chronic toxicity. Intermittent toxicity or other concerns may require additional testing or limits. If acute and/or chronic toxicity is confirmed, the permittee shall:
 - a. Eliminate the source of toxicity through operational changes as soon as possible but in any case not longer than within three months, or
 - b. Perform a TRE. If the permittee repeats the toxicity testing as stated above and the results of the repeat test do not confirm the acute or chronic toxicity, the Department will require the permittee to repeat the toxicity testing as stated above to reconfirm a finding of no acute or chronic toxicity. After reconfirmation, the permittee shall complete any remaining quarterly testing required.

II. SPECIAL CONDITIONS

11. If the permittee completes a TRE in accordance with II.D.10.b and unacceptable toxicity is confirmed, the Whole Effluent Toxicity (WET) permit limit shall continue, and a compliance schedule will be required which shall become discharge permit conditions through a Department initiated permit modification or through a permit renewal.
12. When a WET test result shows reasonable potential for toxicity, unless it can be demonstrated that the source of toxicity has been eliminated, inappropriate test procedures were utilized, or the source has been controlled via a chemical specific permit limitation, WET limits shall continue. The permit may be modified to remove the WET limit if the six follow-up quarterly tests show no toxicity.
13. If plant processes or operations change so that there is a significant change in the nature of the wastewater, the Department may require the permittee to conduct a new set of tests.
14. If a significant industrial user locates within the service area so that significant change in the nature of the wastewater might be anticipated, MDE may require the permittee to conduct a new set of tests.
15. The biomonitoring program study plan, WET test results and related materials shall be submitted electronically to the Department if the permittee has already been approved for the NetDMR process. Otherwise, the permittee shall submit all pertinent physical documents to:

Attention: Whole Effluent Toxicity Coordinator
Compliance Program
Water and Science Administration
Maryland Department of the Environment
1800 Washington Blvd., Suite 420
Baltimore, MD 21230-1708

The permittee is advised to notify the Department at the above address immediately upon electronic submission of reports through NetDMR tool.

II. SPECIAL CONDITIONS

E. Toxicity Reduction Evaluation

The permittee shall conduct a Toxicity Reduction Evaluation (TRE) when a review of toxicity test data by the Department indicates unacceptable acute or chronic effluent toxicity. A TRE is an investigation conducted to identify the causative agents of effluent toxicity, isolate the source(s), determine the effectiveness of control options, implement the necessary control measures and then confirm the reduction in toxicity.

1. Within 90 days of notification by the Department that a TRE is required, the permittee shall submit for approval by the Department a plan of study, schedule and completion date for conducting a TRE. The permittee shall conduct the TRE study consistent with the submitted plan and schedule.
2. This plan shall follow the framework presented in Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants (EPA/833B-99/002) August 1999.

Additional Guidance documents on the TRE process are shown below:

- Methods for Aquatic Toxicity Identification Evaluations Phase I Toxicity Characterization Procedures Second Edition United States Environmental Protection Agency Office of Research and Development, Washington, DC 20460, EPA/600/6-9 1/003 February 1991
- Methods for Aquatic Toxicity Identification Evaluations Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity, United States Environmental Protection Agency Office of Research and Development, Washington DC 20460, EPA/600/R-92/080 September 1993
- Methods for Aquatic Toxicity Identification Evaluations Phase III Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity, United States Environmental Protection Agency Office of Research and Development, Washington DC 20460, EPA /600/R-92/08 1 September 1993
- Clarifications Regarding Toxicity Reduction and Identification Evaluations in the National Pollutant Discharge Elimination System Program, March 27, 2001, U.S. Environmental Protection Agency, Office of Wastewater Management , Office of Regulatory Enforcement, Washington, DC 20460

II. SPECIAL CONDITIONS

3. Beginning 60 days from the date of the Department's acceptance of the TRE study plan and every 60 days thereafter, the permittee shall submit progress reports including all relevant test data to the Department. This shall continue until completion of the toxicity reduction confirmation.
4. Within 60 days of completion of the toxicity identification or the source identification phase of the TRE, the permittee shall submit to the Department a plan, schedule and completion date for implementing those measures necessary to eliminate acute toxicity, an LC_{50} greater than 100%, and/or eliminate chronic toxicity, an IC_{25} greater than the in-stream waste concentration (IWC). The implementation of these measures shall begin immediately upon submission of this plan.
5. Within 60 days of completing the implementation of the control measures to eliminate or reduce toxicity, the permittee shall submit to the Department for approval a study plan to confirm the elimination or reduction of toxicity by using biomonitoring.
6. If, for any reason, the implemented measures do not result in compliance with the Department's toxicity limitations, the permittee shall continue the TRE and a Whole Effluent Toxicity (WET) permit limit and a compliance schedule will be required.
7. All the TRE-related materials shall be submitted electronically to the Department if the permittee has already been approved for the NetDMR tool. Otherwise, the permittee shall submit all pertinent physical documents to:

Attention: Whole Effluent Toxicity Coordinator
Compliance Program
Water and Science Administration
Maryland Department of the Environment
1800 Washington Blvd., Suite 420
Baltimore, MD 21230-1708

The permittee is advised to notify the Department at the above address or via email at mde.biomonitoring@maryland.gov immediately upon electronic submission of reports through NetDMR tool.

II. SPECIAL CONDITIONS

F. Toxic Chemical Testing

1. Concurrent with the biomonitoring study plan, the permittee shall submit to the Department for approval, a study plan to perform analytical testing for toxic chemicals.
2. The toxic chemical testing study plan shall include a description of:
 - a. sampling methods;
 - b. analytical methods;
 - c. practical detection levels; and
 - d. quality control procedures.
3. Concurrently with the first biomonitoring toxicity test (Special Condition II.D.2), during the first four years of the permit cycle, the permittee shall perform analytical testing for the toxic chemicals identified in the Department's "Toxic Pollutant Monitoring Protocol and Reporting Requirements for Toxic Chemical Testing Analytical Data" (05/18/2011).
4. Toxic chemical testing shall be performed in accordance with 40 CFR Part 136 and the Department-approved toxic chemical testing plan. Also after completion and beginning operation of the ENR upgrades at the Back River WWTP, when analyzing effluent samples for Total Polychlorinated Biphenyls (total PCBs) using Method 1668 A or C, the total PCBs concentration is the summation of all individually measured congeners; and both the individual congeners and the total PCBs concentrations shall be reported. Grab samples must be used for cyanide, phenols, and volatile organic compounds. All other pollutants shall be collected using 24-hour flow-proportioned composite samples unless the Department has given prior approval of an alternative sampling type.
5. Substances other than those identified in Section 3 above may be detected in the effluent. If so, the permittee shall identify and quantify the ten present in highest concentration for those compounds for which standards are available.
6. Results of each toxic chemical test performed as per Sections II.F.3 and II.F.4 shall be submitted to the Department with results of the concurrent biomonitoring toxicity test.
7. Toxic chemical testing results shall be reported in accordance with the Department's "Toxic Pollutant Monitoring Protocol and Reporting Requirements for Toxic Chemical Testing Analytical Data" (05/18/2011).

II. SPECIAL CONDITIONS

8. If testing is not performed in accordance with the Department's approved study plan, additional testing may be required by the Department.
9. All the toxic chemical testing results and related materials shall be submitted electronically to the Department if the permittee has already been approved for the NetDMR tool. Otherwise, the permittee shall submit all pertinent physical documents to:

Attention: Toxic Chemical Testing Coordinator
Compliance Program
Water and Science Administration
Maryland Department of the Environment
Montgomery Park Business Center
1800 Washington Boulevard, STE 420
Baltimore, MD. 21230-1708

The permittee is advised to notify the Department at the above address or via email at mde.biomonitoring@maryland.gov immediately upon electronic submission of reports through NetDMR tool.

G. Pretreatment Program

The permittee shall operate and maintain the pretreatment program in accordance with COMAR 26.08.08, the General Pretreatment Regulations for Existing and New Sources of Pollution (40 CFR Part 403) and the approved pretreatment program submission as approved on August 7, 1985 by the Department. The program must be updated if needed to comply with COMAR 26.08.08 or 40 CFR Part 403 or modifications to the State of Maryland Publicly Owned Treatment Works (POTW) Pretreatment Delegation Agreement signed on March 18, 2002. The terms of the POTW Pretreatment Delegation Agreement are expressly incorporated herein as if set forth in full.

H. Protection of Water Quality

It is a violation of this permit to discharge any substance not otherwise listed under the permit's "Effluent Limitations and Monitoring Requirements" special conditions at a level which would cause or contribute to any exceedance of the numerical water quality standards in COMAR 26.08.02.03 unless the level and the substance were disclosed in writing in the permit application prior to the issuance of the permit. If a discharge regulated by this permit causes or contributes to an exceedance of the water quality standards in COMAR 26.08.02.03, including but not limited to the general water quality standards, or if the discharge includes a pollutant that was not disclosed or addressed in the public record for the permit determination, the Department is authorized to modify, suspend or revoke this permit or take enforcement action to address unlawful discharges of pollutants.

II. SPECIAL CONDITIONS

I. Reapplication for a Permit

No later than 18 months before the expiration date of this permit, unless permission for a later date has been granted by the Department, the permittee shall submit a new application for a permit or notify the Department of the intent to cease discharging by the expiration date. In the event that a timely and complete reapplication has been submitted and the Department is unable, through no fault of the permittee, to issue a new permit before the expiration date of this permit, the terms and conditions of this permit continue and remain fully effective and enforceable. The renewal application is required by that date in accordance with the requirements of MDE's Watershed Permitting Plan under which all discharge permits in a watershed should be issued in the same year.

J. Wastewater Discharges to Groundwater

This permit does not authorize the permittee to discharge any type or quantity of the wastewater to the groundwater of the State. The permittee must make every effort to prevent any type of leakage or discharges to the groundwater system from the wastewater treatment lagoon(s) and/or other conveyance system.

K. Reporting Nutrient Total Annual Loads to Comply with Concentration-based Annual Loading Rate Limits

The Permittee shall report the concentration-based (also known as Floating Cap) annual loading requirements for TN and TP on the December DMR designated "001-Z". The permittee shall submit to the Department the Discharge Monitoring Report for the month of December with this designation. For each calendar year, the permittee shall calculate the annual concentration-based loads for TN and TP as per the footnote- 6 of the Special Condition II.A, and report these loadings along with the total annual cumulative flow on the December month DMR in accordance with the General Condition III.A.2.a of this discharge permit. If the Back River WWTP discharges effluent at more than a single outfall, the total annual loads for TN, TP and total annual discharge flow shall be reported as a sum of the individual results from each outfall.

L. Combined Sewer Overflows (CSOs)

There are no known combined sewer overflows in the Back River wastewater collection system service areas at the time of issuance of this permit (last CSO Point Source # 013P, Forest Park area in Baltimore City area was eliminated on June 20, 2006). However, since parts of the Baltimore City's collection system are old and the system serves an urban area, there may be secluded and hidden CSOs, which are not known at this time. In order to address this potential, the following CSO reopener clause will apply to any CSO that subsequently comes to the knowledge of the Department. If a CSO is identified in the collection system contributing to this facility, this permit may be reopened to incorporate the CSO requirements developed in accordance with the National Combined Sewer Overflow Strategy promulgated in October 8, 2001 by the EPA.

III. GENERAL CONDITIONS

A. Monitoring and Reporting

1. Representative Sampling

Samples and measurements shall be taken at times that are representative of the quantity and quality of the discharge, and at evenly spaced intervals.

2. Monthly Monitoring Results

a. Discharge Monitoring Reports

Monitoring results obtained during each calendar month shall be summarized and submitted electronically using the NetDMR tool. Results shall be submitted to the Department via NetDMR no later than the 28th of the month following the end of the reporting month.

b. Monthly Operating Reports (MORs)

The permittee shall submit monthly operating reports on a form acceptable to the Compliance Program. For each calendar month, the permittee shall submit to the Department a signed original of the MOR as an attachment to Copy of Record (COR) via NetDMR in electronic format concurrently with the Discharge Monitoring Report submission postmarked no later than the 28th day of the month following the reporting month.

c. Toxic Chemical Reporting

Any data collected according to the Department's "Toxic Pollutant Monitoring Protocol and Reporting Requirements for Toxic Chemical Testing Analytical Data" (05/18/2011) being submitted to the Department, either in fulfillment of Special Conditions II.B or pursuant to the toxic chemical testing requirement, pretreatment requirements or toxic metals or organic data collected on a voluntary basis, must be accompanied by laboratory data reports. At a minimum, these reports shall include, the name of the facility, the date(s) of sampling, beginning and ending sample time,

III. GENERAL CONDITIONS

c. Toxic Chemical Reporting, continued

place of sampling collection, the sample type (grab, composite, etc.), the sample description (influent or effluent), the preservation method, the analytical method used for each parameter, the analytical method detection limit, the date of analysis, the name of person performing the analysis, the analytical result, and the name and address of the laboratory performing the analyses. Chain-of-custody forms shall also be submitted.

If the permittee prefers to submit hard copy of this information along with the supporting documentations instead of the electronic submission using NetDMR tool, they shall be submitted to:

Attention: Toxic Chemical Data
WSA – Compliance Program
Maryland Department of the Environment
1800 Washington Boulevard, STE 420
Baltimore, Maryland 21230-1708

3. Sampling and Analysis Methods

Analytical and sampling methods shall conform to test procedures for the analysis of pollutants as identified in 40 CFR Part 136 - "Guidelines Establishing Test Procedures for the Analysis of Pollutants."

4. Analytical Laboratory

Within 30 days after the effective date of this permit, the permittee shall submit to the Department the name and address of the analytical laboratory (including the permittee's own laboratory) which is used to perform the monitoring required by this permit.

If the laboratory changes during the effective period of this permit, the permittee shall notify the Department of the new laboratory within 30 days after the change.

III. GENERAL CONDITIONS

5. Monitoring Equipment Maintenance

- a. The permittee shall calibrate and maintain all monitoring and analytical instrumentation to ensure accuracy of measurements.
- b. Environment Article, Section 9-343 provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

6. Recording of Results

For each measurement or sample taken pursuant to the requirements of the permit, the permittee shall record the following information:

- a. the date, exact place and time of sampling or measurement;
- b. the person(s) who performed the sampling or measurement;
- c. the dates analyses were performed;
- d. the person(s) who performed each analysis;
- e. the analytical techniques or methods used; and
- f. the results of such analyses.

7. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the Discharge Monitoring Report. The increased frequency shall also be reported. The results of any other monitoring performed by the permittee shall be made available to the Department upon request.

8. Record Retention

All data used to complete the permit application and all records and information resulting from the monitoring activities required by this permit, including all records of sampling and analyses performed, calibration and maintenance of instrumentation, and recordings from continuous monitoring instruments, shall be retained for a minimum of three years. This period shall be extended automatically during the course of litigation or when requested by the Department.

III. GENERAL CONDITIONS

B. General Requirements

1. Permit Noncompliance - Notification Requirements

All discharges authorized herein shall be consistent with the terms and conditions of this permit. If, for any reason, the permittee does not comply with or will be unable to comply with any permit condition, the permittee shall, within 24 hours, notify the Department by telephone at (410) 537-3510 during work hours or at (866) 633-4686 during evenings, weekends, and holidays. The permittee shall provide the Department with the following information in writing within five days of such oral notification.

- a. a description of the noncomplying discharge including the name of the stream and the impact upon the receiving waters;
- b. cause of noncompliance;
- c. the duration of the period of noncompliance and the anticipated time the condition of noncompliance is expected to continue;
- d. steps taken by the permittee to reduce and eliminate the noncomplying discharge;
- e. steps to be taken by the permittee to prevent recurrence of the condition of noncompliance;
- f. a description of the accelerated or additional monitoring to determine the nature and impact of the noncomplying discharge; and
- g. the results of the monitoring described in f. above.

2. Change in Discharge

The permittee shall report any anticipated facility expansions, production increases, or process modifications which will result in new, different or an increased discharge of pollutants by submitting a new application at least 180 days prior to the commencement of the changed discharge except that if the change only affects a listed pollutant and will not violate the effluent limitations specified in this permit, by providing written notice to the Department. Following such notice, the permit may be modified by the Department to include new effluent limitations on those pollutants.

III. GENERAL CONDITIONS

3. Facility Operation and Quality Control

All waste collection, control, treatment and disposal facilities shall be operated in a manner consistent with the following:

- a. Facilities shall be operated efficiently to minimize upsets and discharges of excessive pollutants.
- b. The permittee shall provide an adequate operating staff qualified to carry out operation, maintenance and testing functions required to ensure compliance with this permit. Superintendents and operators must be certified by the Board of Waterworks and Waste Systems Operators located at Montgomery Park Business Center, 1800 Washington Boulevard, STE- 410, Baltimore, Maryland 21230 in accordance with Title 12 of Environmental Article, Annotated Code of Maryland, and Section 26.06.01 of the COMAR.
- c. Facility maintenance work, which adversely affects or may adversely affect the discharge quality, shall be scheduled during non-critical water quality periods.

4. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact to waters of this State, human health or the environment resulting from noncompliance with any effluent limitations specified in this permit, and must perform accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

5. Bypassing

Any bypass of treatment facilities is prohibited unless the bypass does not cause any violations of the effluent limitations specified in Special Condition II.A, and is for essential maintenance to assure efficient operation, or unless the permittee can prove that:

- a. the bypass is unavoidable to prevent loss of life, personal injury, or substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources; and
- b. there are no feasible alternatives to the bypass; and

III. GENERAL CONDITIONS

- c. the Department receives notification pursuant to General Condition III.B.1 above. Where the need for a bypass is known (or should have been known) in advance, this notification shall be submitted to the Department for approval at least ten days before the date of the bypass or at the earliest possible date if the period of advance knowledge is less than ten days; and
 - d. the bypass is allowed under conditions approved by the Department to be necessary to minimize adverse effects.
- 6. Conditions Necessary for Demonstration of Upset

An upset shall constitute an affirmative defense to an action brought for noncompliance with technology-based effluent limitations only if the permittee demonstrates, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

 - a. an upset occurred and that the permittee can identify the specific cause(s) of the upset;
 - b. the permitted facility was at the time being operated in a prudent and workman-like manner and in compliance with proper operation and maintenance procedures;
 - c. the permittee submitted a 24-hour notification of upset in accordance with the reporting requirements of General Condition III.B.1 above;
 - d. the permittee submitted, within five calendar days of becoming aware of the upset, documentation to support and justify the upset; and
 - e. the permittee complied with any remedial measures required to minimize adverse impact.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

7. Sewage Sludge Requirements

The permittee shall comply with all State and federal laws and regulations regarding Sewage Sludge Management, and with any regulations promulgated pursuant to Environment Article, Section 9-230 *et seq.* or to the Clean Water Act, Section 405 (d). A Sewage Sludge Utilization Permit is required for the collection, handling, burning, storage, treatment, land application, disposal, or transportation of sewage sludge, processed sewage sludge, or any product containing these materials in Maryland. If the sludge is hauled out of the State for disposal, a transportation permit must be obtained from the Department.

III. GENERAL CONDITIONS

8. Power Failure

The permittee shall maintain compliance with the effluent limitations and all other terms and conditions of this permit in the event of a reduction, loss or failure of the primary source of power to the wastewater collection and treatment facilities.

9. Right of Entry

In accordance with 40 CFR §122.41(i), the permittee shall allow the Secretary of the Department, the Regional Administrator of the Environmental Protection Agency, and their authorized representatives (including an authorized contractor acting as a representative), upon presentation of credentials and other documents as required by the law, to:

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

10. Property Rights/Compliance with Other Requirements

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property, invasion of personal rights, or any infringement of federal, State or local laws or regulations.

11. Reports and Information

- a. Upon request, the permittee shall provide to the Department, within a reasonable time, copies of records required to be kept by this permit. The permittee shall also furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit; or to determine compliance with this permit.
- b. All applications, reports or information submitted to the Department shall be signed and certified as required by COMAR 26.08.04.01 and 40 CFR 122.22.

III. GENERAL CONDITIONS

- c. Except for data determined to be confidential under COMAR 26.08.04.01, all data shall be available for public inspection at the Department and the Office of the Regional Administrator of the Environmental Protection Agency. Effluent data shall not be considered confidential.
- d. Environment Article, Section 9-343 provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months or by both.

12. Transfer of Ownership or Control

In the event of any change in ownership or control of facilities from which the authorized discharge emanates, the permit may be transferred automatically to another person only if:

- a. the current permittee notify the Department, in writing, of the proposed transfer at least 30 days prior to the proposed transfer date;
- b. the notice includes a written agreement between the existing permittee and a new permittee containing the specific date of proposed transfer of permit coverage, and of responsibilities and liabilities under the permit; and
- c. neither the current permittee nor the new permittee receive notification from the Department, within 30 days of the Department's receipt of the agreement, of its intent to modify, revoke, reissue or terminate the existing permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 12(b) above.

13. New Effluent Standards

This permit shall be revoked and reissued or modified to meet any effluent standard, water quality standard or prohibition established under the Environment Article, the Clean Water Act, or regulations promulgated thereto, and the permittee shall be so notified.

III. GENERAL CONDITIONS

14. Industrial Users

The permittee shall require all industrial users of the wastewater treatment facility to comply with user charges as established by the permittee, pursuant to Section 9-326(a)(i) of the Environment Article.

15. Noncompliance

Nothing in this permit shall be construed to preclude the institution of any legal action for noncompliance with State, federal or local laws and regulations.

16. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action against the permittee or to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or under the Environment Article.

17. Waterway Construction and Obstruction

The permit does not authorize the construction or placing of physical structures, facilities, debris, or the undertaking of related activities in any waters of this State including the 100 year flood plain.

18. Construction Permit

This permit is not a permit to construct. For a new facility, in order to make this permit valid, a construction permit shall be obtained to meet the requirements of COMAR 26.03.12.03(A) and Environment Article, Section 9-204(d).

19. Storm Water Pollution Prevention

(a) The permittee shall maintain coverage under the "General Permit for Discharges from Storm Water Associated with Industrial Activities" in accordance with Part II A of the State NPDES Permit No. MDR0000, and

(b) Industrial storm water is not authorized under this individual permit.

20. Severability

If any provision of this permit shall be held invalid for any reason, the remaining provisions shall remain in full force and effect, and such invalid provisions shall be considered severed and deleted from this permit.

III. GENERAL CONDITIONS

C. Wastewater Collection System

This permit shall not authorize discharges from the wastewater collection system for this facility.

1. Reporting Requirements

Pursuant to Environment Article Sub title 9-331.1, the permittee must report sanitary sewer overflows (SSOs) which result in the direct or potential discharge of raw or diluted sewage into the surface waters or ground waters of the State to the Water and Science Administration's Compliance Program. Concurrently, the permittee shall also notify the local health department. Such reports must be made via telephone as soon as practicable, but no later than 24 hours after the time that the permittee became aware of the event. Reportable SSOs include, but are not limited to, overflows into the surface of the ground, into waterways, storm drains, ditches or other manmade or natural drainage conveyances to surface or ground waters which are reasonably likely to reach waters of the State. Overflows that are wholly contained within buildings and not likely to discharge to waterways need not be reported. Treatment plant bypasses shall be reported under General Condition III.B.1. Telephone reports shall be made to (410) 537-3510 on weekdays between 8:00 a. m. and 5:00 p.m. After hours telephone notification shall be made to emergency response number at (866) 633-4686.

III. GENERAL CONDITIONS

C. 1. Reporting Requirements, Continued

When the incident is reported to the Department, the following information needs to be included:

- a. the location of the overflow, including city or county,
- b. the name of the receiving water, if applicable;
- c. an estimate of the volume of sewage discharged;
- d. a description of the sewer system or treatment plant component from which the overflow was released (such as manhole, crack in pipe, pumping station wet well or constructed overflow pipe);
- e. an estimate of the overflow's impact upon public health and to waters of the State;
- f. the cause or suspected cause of the overflow;
- g. the estimated date and time when the overflow began and stopped or the anticipated time the overflow is expected to continue;
- h. if known at the time of reporting, the steps taken or planned to reduce, eliminate and prevent reoccurrence of the overflow and a schedule of major milestones for those steps; (if unknown at the time the telephone report is made, the steps must be included in the written reports submitted under general conditions III.C.2).
- i. if known at the time of reporting, measures taken or planned to mitigate the adverse impact of the overflow and a schedule of major milestones for those steps (if unknown at the time the telephone report is made, the steps must be included in the written reports submitted under general conditions III.C.2); and
- j. whether there has already been a notification to the public and other City or County Agencies or Departments and how notification was done.

III. GENERAL CONDITIONS

C. 2. Written Reports

Within 5 calendar days following telephone notification of the event, the permittee shall provide MDE with a written report regarding the incident that includes, at a minimum, the information cited above. The permittee shall maintain copies of all overflow records and reports, work orders associated with investigation of overflows, a list and description of complaints from customers or others related to overflows (including backups of sewage in to houses or businesses), and documentation of performance and implementation measures for minimum period of three years and shall make this information available to MDE for review upon written request.

This wastewater collection system provision may be superseded by a general permit for collection systems, when such a permit is issued by MDE and the permittee have been accepted for registration under the permit.

3. Other Requirements

The permittee, as directed by the State or local health department, shall also be responsible for posting notification in close proximity to the affected area/stream and for conducting appropriate water quality sampling as deemed necessary.

D. Permit Expiration, Modification, or Revocation

1. Expiration of Permit

This permit and the authorization to discharge shall expire at midnight on the expiration date of the permit unless the permittee has submitted a timely and complete reapplication pursuant to Section II.I.

2. [Reserved.]

3. Permit Modification - Request of Responsible Permittee

A permit may be modified by the Department upon the written request of the permittee and after notice and opportunity for a public hearing in accordance with the provisions set forth in COMAR 26.08.04.10.

4. Permit Modification, Suspension, Revocation - Violation of Laws

A permit may also be modified, suspended or revoked by the Department, in the event of a violation of the terms or conditions of the permit, or of State or federal laws and regulations and in accordance with the provisions set forth in COMAR 26.08.04.10. This permit may be suspended or revoked upon a final, unreviewable determination that the permittee lacks, or is in violation of, any federal, state, or local approval necessary to conduct the activities authorized by this permit.

IV. CIVIL AND CRIMINAL PENALTIES

A. Civil Penalties for Violations of Permit Conditions

In addition to civil penalties for violations of State water pollution control laws set forth in Section 9-342 of the Environment Article, Annotated Code of Maryland, the Permittee shall be subject to civil penalty set forth in 33 U.S.C. § 1319 (d) of the Clean Water Act as adjusted for inflation according to 40 CFR, §19.4.

B. Criminal Penalties for Violations of Permit Conditions

In addition to criminal penalties for violations of State water pollution control laws set forth in Section 9-343 of the Environment Article, Annotated Code of Maryland, the Permittee shall be subject to criminal penalty set forth in 33 U.S.C. § 1319 (c).

V. MAP SHOWING DISCHARGE POINT LOCATION




SCALE 0 0.35 0.7 1.4 2.1 2.8 Miles

BALTIMORE COUNTY

VI. NPDES PROGRAM

On September 5, 1974, the Administrator of the U.S. Environmental Protection Agency approved the proposal submitted by the State of Maryland for the operation of a permit program for wastewater discharges pursuant to Section 402 of the Clean Water Act.

Pursuant to the aforementioned approval, this discharge permit is both a State of Maryland discharge permit and an NPDES permit.



D. Lee Currey, Director
Water and Science Administration

ADDRESS

PERMIT NUMBER

DISCHARGE NUMBER

FACILITY LOCATION

MONITORING PERIOD

FROM

YEARMO DAY

TO

YEARMO DAY

☐ Check here if No Discharge

NOTE: Read Instructions before completing this form

PARAMETER		QUANTITY OR LOADING			QUALITY OR CONCENTRATION				NO. EX	FREQUENCY OF ANALYSIS	SAMPLE TYPE
		VALUE	VALUE	UNITS	VALUE	VALUE	VALUE	UNITS			
	SAMPLE MEASUREMENT										
	PERMIT REQUIREMENT										
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NAME/TITLE PRINCIPAL EXECUTIVE OFFICER

TYPED OR PRINTED

I CERTIFY UNDER PENALTY OF LAW THAT THIS DOCUMENT AND ALL ATTACHMENTS WERE PREPARED UNDER MY DIRECTION OR SUPERVISION IN ACCORDANCE WITH A SYSTEM DESIGNED TO ASSURE THAT QUALIFIED PERSONNEL PROPERLY GATHER AND EVALUATE THE INFORMATION SUBMITTED. BASED ON MY INQUIRY OF THE PERSON OR PERSONS WHO MANAGE THE SYSTEM, OR THOSE PERSONS DIRECTLY RESPONSIBLE FOR GATHERING THE INFORMATION, THE INFORMATION SUBMITTED IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE, ACCURATE, AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT FOR KNOWING VIOLATIONS.

SIGNATURE OF PRINCIPAL EXECUTIVE OFFICER OR AUTHORIZED AGENT

TELEPHONE

AREA CODE

NUMBER

DATE

YEAR

MO

DAY

COMMENTS AND EXPLANATION OF ANY VIOLATIONS (Reference all attachments here)