



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**VIA ELECTRONIC MAIL**

Jeff Wilkerson, Public Works Director  
Mark Baldwin, City Manager  
City of Martinsburg, West Virginia  
232 N. Queen Street  
Martinsburg, WV 25402  
[jwilkerson@cityofmartinsburg.org](mailto:jwilkerson@cityofmartinsburg.org)  
[mbaldwin@cityofmartinsburg.org](mailto:mbaldwin@cityofmartinsburg.org)

Re: City of Martinsburg, West Virginia Administrative Order on Consent  
Docket No. CWA-03-2021-0054DN MS4 Aboveground Storage Tanks

Dear Mr. Jeff Wilkerson and Mr. Mark Baldwin:

I am writing in regard to the Administrative Order on Consent (“AOC”) that the U. S. Environmental Protection Agency, Region III (“EPA”) issued to the City of Martinsburg (“Martinsburg or Respondent”), on April 6, 2021. EPA has become aware of a provision of the West Virginia state code that affects the requirements of NPDES Permit No. WV0116025, and therefore impacts the deliverables required of Martinsburg under the AOC.

**West Virginia Code, § 22-30-14(b) provides the following:**

“A list of the potential sources of significant contamination contained within the zone of critical concern or zone of peripheral concern as provided by the Bureau for Public Health, working in conjunction with the department and the Division of Homeland Security and Emergency Management may only be disclosed to the extent consistent with the protection of trade secrets, confidential business information and information designated by the Division of Homeland Security and Emergency Management as described above. The exact location of the contaminants within the zone of critical concern or zone of peripheral concern is not subject to public disclosure in response to a Freedom of Information Act request under article one, chapter twenty-nine-b of this code. However, the location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern or zone of peripheral concern shall be made known to one or more designees of the public water utility, and shall be maintained in a confidential manner by the public water utility. In the event of a release to waters of the state that could affect a public water supply, information about the release shall be promptly made available to any emergency responders responding to the site of a spill or release and the general public shall be promptly notified in the event of a chemical spill, release or related emergency by the Director of Homeland Security and Emergency Management.”

Pursuant to its authority under the CWA and the NPDES program approval, West Virginia Department of Environmental Protection approved coverage to Respondent under General NPDES

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Water Pollution Control Permit — NPDES Permit No. WV0116025, effective August 11, 2014 ("MS4 Permit"). Coverage was set to expire on August 11, 2019. WVDEP administratively extended Respondent's coverage under the MS4 Permit until WVDEP issues the new General Permit. At this time, the NPDES Permit No. WV0116025 has not been modified to reflect the state code provision above. WVDEP contacted the EPA specifically regarding the Aboveground Storage Tank ("AST") requirement in the AOC deliverables, because the state code above applies to ASTs.

**Permit Part II.C.7.c.18.b.iii (IDDE) includes the following:**

- ii. "The inventory will include a listing of all facilities with above ground storage tanks that are not covered by an NPDES permit."
- iii. "The permittee's first annual report after identifying the locations with above ground tank will include the number of tanks, contents, and address."
- iv. "Subsequent reports do not need to include previously reported above ground tanks unless the permittee learns of changes at the facility such as tank demolition, construction, a new business type or owner, or a change of tank content."

**AOC Section V. Compliance Order Paragraph 55.d. includes the following:**

"An inventory of all facilities with aboveground storage tanks that are not covered by an NPDES permit.

- i. The Respondent's first annual report after identifying the locations with above ground tank will include the number of tanks, contents, and address.
- ii. Subsequent annual reports do not need to include previously reported above ground tanks unless the permittee learns of changes at the facility such as tank demolition, construction, a new business type or owner, or a change of tank content."

Although, the language included in the AOC Compliance Order is consistent with the language from the Permit, EPA is removing this requirement from the AOC Compliance Order. WVDEP informed the EPA that Martinsburg already has an inventory of the ASTs for its drinking water program. The Annual Report is considered a public document, and therefore the ASTs should be removed from that document and not included in future Annual Reports, maps shared on a public platform, or any other public documents.

If you have any questions, please contact Natalie Katz, Senior Assistant Regional Counsel, at (215) 814-2615 or [katz.natalie@epa.gov](mailto:katz.natalie@epa.gov).

Sincerely,

Karen Melvin, Director  
Enforcement and Compliance Assurance Division

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cc: Natalie Katz, EPA (Katz.Natalie@epa.gov)  
Amanda Pruzinsky, EPA (Pruzinsky.Amanda@epa.gov)  
Regional Hearing Clerk, EPA, Region III (R3\_Hearing\_Clerk@epa.gov)  
Jared Tomlin, City of Martinsburg (JTomlin@cityofmartinsburg.org)  
Rebecca Russell, City of Martinsburg (rrussell@cityofmartinsburg.org)  
Jim Kelly, City of Martinsburg (JKelly@cityofmartinsburg.org)  
Andrew Blake, City of Martinsburg (ABlake@cityofmartinsburg.org)  
Floyd M. (Kin) Sayre, III, Bowles Rice LLP (ksayre@bowlesrice.com)  
Brad Wright, WVDEP (Brad.M.Wright@wv.gov)