

II. JURISDICTION

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6) in assessing Class II penalties under Section 309(g). On January 12, 2022, EPA sent a communication to the Virginia Department of Environmental Quality (“VADEQ”), giving prior notice of this action in accordance with Section 309(g)(1) of CWA, 33 U.S.C. § 1319(g)(1).

III. GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.

6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.

7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.

8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.

9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.

10. Respondent shall bear its own costs and attorney’s fees in connection with this proceeding.

11. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

13. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System (“NPDES”)

program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.

14. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), the VADEQ is authorized to administer the NPDES program in the Commonwealth of Virginia.

15. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), EPA retains its authority to take enforcement action within the Commonwealth of Virginia for NPDES permit violations.

16. Powhatan is a municipality, and as such, it is a “person” within the meaning of Section 502(4) and (5) of the Act, 33 U.S.C. § 1362(4) and (5).

17. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the U.S. except in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the Act.

18. “Discharge of a pollutant” means “[a]ny addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source’.” 40 C.F.R. § 122.2 *See also* 33 U.S.C. § 1362(12).

19. Respondent owns and operates the Dutoy Creek Wastewater Treatment Plant (“WWTP” or “Facility”) located at 2040 Anderson Highway, Powhatan, VA 23139. The WWTP discharges treated domestic wastewater from the Facility into Dutoy Creek, which is within the Middle James River watershed that ultimately discharges to the Chesapeake Bay.

20. At all times relevant to this Consent Agreement and Final Order, Respondent’s operation of the WWTP has been subject to NPDES Discharge Permit No. VA0090727 (“Permit”), which was issued by VADEQ to Powhatan for its WWTP on November 1, 2018 and is set to expire on October 31, 2023.

21. Respondent is authorized to discharge pollutants, in the form of wastewater from the WWTP, to waters of the United States in accordance with the terms and conditions of its Permit.

22. Dutoy Creek, which is within the Middle James River watershed that ultimately discharges to the Chesapeake Bay, is a water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

23. At all times relevant to this Consent Agreement and Final Order, the Facility discharged wastewater into Dutoy Creek through a “point source” as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).

24. On June 30, 2021, representatives of EPA inspected the WWTP for purposes of determining compliance with the Permit (“Inspection”).

Count 1
Effluent Exceedances

25. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

26. Part A of NPDES Permit No. VA0090727 sets forth the effluent limits in effect from November 1, 2018 until October 31, 2023.

27. There were a total of thirty-six (36) effluent limit exceedances that were identified at Dutoy Creek WWTP between December 31, 2018 and March 1, 2022. Permit limits were exceeded for Nitrogen, Ammonia total (“Ammonia”) Nitrogen, Kjeldahl total (“TKN”), Biological Oxygen Demand (“BOD5”), Zinc, and E. Coli. The repeated violations caused the WWTP to be in significant non-compliance (“SNC”). A summary of those effluent exceedances is as follows:

Monitoring Period End Date	Parameter Name	DMR Value	Permit Limit	Units	Limit Type	Percent Exceeded (%)
12/31/2018	Nitrogen, Nitrate	15	14	Mg/L	Weekly Average	7
12/31/2018	Nitrogen, Nitrate	15	14	Mg/L	Monthly Average	7
3/31/2019	TKN	5.5	4.5	Mg/L	Weekly Average	22
3/31/2019	TKN	3.2	3	Mg/L	Monthly Average	7
9/30/2019	Nitrogen, Nitrate	18	14	Mg/L	Monthly Average	29
9/30/2019	Nitrogen, Nitrate	18	14	Mg/L	Weekly Average	29
10/31/2019	BOD5	4.74	2.8	Kg/d	Weekly Average	69
10/31/2019	BOD5	23	15	Mg/l	Weekly Average	53
11/30/2019	BOD5	4.16	2.8	Kg/d	Weekly Average	48
12/31/2019	E. Coli	149	126	#/100mL	Geo Mean	18
02/29/2020	TKN	0.9840	0.850	Kg/d	Weekly Average	16
2/29/2020	TKN	4.9	4.5	Mg/L	Weekly Average	9

Monitoring Period End Date	Parameter Name	DMR Value	Permit Limit	Units	Limit Type	Percent Exceeded (%)
3/31/2020	Nitrogen, Nitrate	21	14	Mg/L	Weekly Average	50
3/31/2020	Nitrogen, Nitrate	21	14	Mg/L	Monthly Average	50
7/31/2020	TKN	32	14	Mg/L	Monthly Average	129
7/31/2020	TKN	32	14	Mg/L	Weekly Average	129
7/31/2020	Zinc	0.1810	0.091	Mg/L	Weekly Average	99
7/31/2020	Zinc	0.1810	0.091	Mg/L	Monthly Average	99
9/30/2020	Nitrogen, Nitrate	18	14	Mg/L	Monthly Average	29
9/30/2020	Nitrogen, Nitrate	18	14	Mg/L	Weekly Average	29
9/30/2020	TKN	3.2	3	Mg/L	Monthly Average	7
11/30/2020	Zinc	0.1630	0.091	Mg/L	Monthly Average	79
11/30/2020	Zinc	0.1630	0.091	Mg/L	Weekly Average	79
1/31/2021	Ammonia	2.44	2.24	Mg/L	Weekly Average	9
1/31/2021	Zinc	0.1190	0.091	Mg/L	Monthly Average	31
1/31/2021	Zinc	0.1190	0.091	Mg/L	Weekly Average	31
02/28/2021	TKN	0.9210	0.850	Kg/d	Weekly Average	8
02/28/2021	TKN	4.98	4.5	Mg/L	Weekly Average	11
9/30/2021	Nitrogen, Nitrate	28	14	Mg/L	Weekly Average	100
9/30/2021	Nitrogen, Nitrate	28	14	Mg/L	Monthly Average	100
9/30/2021	Zinc	0.1230	0.091	Mg/L	Weekly Average	35
9/30/2021	Zinc	0.1230	0.091	Mg/L	Monthly Average	35
10/31/2021	Zinc	0.1180	0.091	Mg/L	Weekly Average	30

Monitoring Period End Date	Parameter Name	DMR Value	Permit Limit	Units	Limit Type	Percent Exceeded (%)
10/31/2021	Zinc	0.1180	0.091	Mg/L	Monthly Average	30
12/31/2021	Nitrogen, Nitrate	25	14	Mg/L	Weekly Average	79
12/31/2021	Nitrogen, Nitrate	25	14	Mg/L	Monthly Average	79

28. Based on the allegations in Paragraph 27, above, Respondent violated Part A of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a), by failing to comply with the effluent limitations contained in the Permit on thirty-six (36) occasions from December 31, 2018 through December 31, 2021.

29. In failing to comply with the effluent limitations contained in Part A of its Permit, Respondent is subject to penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 2

Operation and Maintenance Procedures Missing from Facility Management Plan

30. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

31. Part I.B.9 of the Permit requires that the Operation and Maintenance (“O&M”) Manual contain specific elements and that the Permittee maintain a current O&M Manual for the treatment works at the WWTP. Any changes in the practices and procedures followed by the Permittee shall be documented in the O&M Manual within 90 days of the effective date of the changes. The Permittee shall operate the treatment works in accordance with the O&M Manual and shall make the O&M Manual available to VADEQ personnel for review during facility inspections.

32. At the time of the Inspection on June 30, 2021, the following chemicals were observed at the Facility: magnesium oxide, soda ash, and “Spec 52” (polymer). These chemicals were not included in Respondent’s 2018 O&M Manual.

33. At the time of the Inspection on June 30, 2021, Respondent’s 2018 O&M Manual did not detail the hours of operation or staffing requirements. In addition, during the Inspection, the EPA Inspection team observed that the amount of time for each phase of sequencing batch-reactor (“SBR”) operations was inconsistent with the procedures set forth in Respondent’s 2018 O&M manual.

34. Based on the allegations in Paragraphs 32 and 33, above, Respondent violated Part I.B.9 of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a), by failing to operate the Facility in accordance with the O&M Manual and by failing to document changes in the

practices and procedures in the Facility's O&M Manual: (1) the chemicals used in the treatment processes at the WWTP; (2) the hours of operation and staffing requirements; and (3) changes in the time for each phase of SBR operations within 90 days of the effective date of the changes as required by the Permit.

35. In failing to comply with the requirement in Part I.B.9. of its Permit that its O&M Manual contain specific elements as described in Paragraphs 32 through 34, above, Respondent is subject to penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

CIVIL PENALTY

36. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of Twenty-Thousand dollars (\$20,000), which Respondent shall be liable to pay in accordance with the terms set forth below.

37. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), including, the following: the nature, circumstances, extent and gravity of the violation(s), and the violator's ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's Interim Clean Water Act Settlement Penalty Policy dated March 1, 1995, which reflects the statutory factors set forth in in Section 309(g) of the CWA and adjusted in accordance with the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

38. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *EPA Docket No. CWA-03-2023-0022*;
- b. All checks shall be made payable to the "United States Treasury;"
- c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously by email to:

Louis F. Ramalho
Senior Assistant Regional Counsel
Ramalho.Louis@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

39. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

40. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondent in accordance with 40 C.F.R. § 13.9(a).

41. **INTEREST:** Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).

42. **ADMINISTRATIVE COSTS:** The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

43. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

44. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

45. The parties consent to service of the Final Order by e-mail at the following valid email addresses: ramalho.louis@epa.gov (for Complainant), and chris@aqualaw.com and bschardein@powhatanva.gov (for Respondent).

V. GENERAL SETTLEMENT CONDITIONS

46. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

47. Respondent certifies that to the best of its knowledge and belief, any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about Respondent's ability to pay a penalty, are knowingly false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

VI. CERTIFICATION OF COMPLIANCE

48. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with the Permit conditions and terms.

VII. OTHER APPLICABLE LAWS

49. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, or any regulations promulgated thereunder.

VIII. RESERVATION OF RIGHTS

50. This Consent Agreement and Final Order resolves only EPA’s claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the Clean Water Act, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date. Respondent reserves whatever rights or defenses it may have to defend itself in any such action.

IX. EXECUTION /PARTIES BOUND

51. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

X. EFFECTIVE DATE

52. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

XI. ENTIRE AGREEMENT


53. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

In the Matter of Powhatan County

EPA Docket No. CWA-03-2023-0022

For Respondent:

Powhatan County

By: 
Bret Schardein
Interim County Administrator 2/22/23

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[*Digital Signature and Date*]
Karen Melvin, Division Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 3

By: _____
[*Digital Signature and Date*]
Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. EPA Region 3

NOW, THEREFORE, PURSUANT TO Section 309(g) of the Clean Water Act, 33 U.S.C. Section 1319(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **Twenty Thousand Dollars (\$20,000)** in accordance with the payment provisions set forth in the Consent Agreement, and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the Clean Water Act and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: _____

By: _____

[Digital Signature and Date]

Joseph J. Lisa

Regional Judicial and Presiding Officer

U.S. EPA Region III

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[Digital Signature and Date]

Bevin Esposito
Regional Hearing Clerk
U.S. EPA, Region III