

authority to the Regional Administrator who, in turn, has delegated this authority to enter into consent agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "Consent Agreement and Final Order") resolve Complainant's civil penalty claims against Respondent under 309 of the CWA, 33 U.S.C. § 1319, for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

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).
5. On April 19, 2023, EPA sent a communication to the West Virginia Department of the Environmental Protection ("WVDEP"), 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

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of the 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.
9. 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.
10. 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.
11. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

12. 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), the 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

13. 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, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, 1342, and 1344.
14. 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.
15. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of the 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.
16. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), WVDEP is authorized to administer the NPDES program in the State of West Virginia.
17. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), EPA retains its authority to take enforcement action within the State of West Virginia for NPDES permit violations.
18. As a “municipality,” Respondent is a “person” within the meaning of Section 502(4) and (5) of the Act, 33 U.S.C. § 1362(4) and (5).
19. “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).
20. At all times relevant to this Consent Agreement, Respondent owned and operated the Borough of City of Salem Wastewater Treatment Plant (“WWTP” or “Facility”) located at 229 West Main Street, Salem, WV.
21. At all times relevant to this Consent Agreement, the operation of the WWTP has been subject to West Virginia NPDES Discharge Permit No. WV0020257 (“Permit”), which was issued by WVDEP on February 11, 2019, became effective on April 1, 2019, and has an expiration date of February 10, 2024.

- 22. 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.
- 23. The WWTP discharges domestic wastewater into Salem Fork, a tributary to the Monongahela River.
- 24. The Salem Fork, a tributary to the Monongahela River, is a water of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
- 25. At all times relevant to this Consent Agreement, the Respondent discharged wastewater into the Salem Fork, a tributary to the Monongahela River, through a “point source” as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- 26. On April 12, 2022, EPA and WVDEP representatives inspected the WWTP for purposes of determining compliance with the Permit (the “Inspection”).

Count 1
Effluent Exceedances

- 27. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
- 28. Part I.A.1 of the Permit sets forth the effluent limits under the Permit.
- 29. There were a total of ninety-one (91) effluent exceedances from April 1, 2019 to December 31, 2023 that were reported in Respondent’s discharge monitoring reports (“DMRs”). The parameters exceeded include dissolved oxygen (“DO”), biological oxygen demand, 5-day (“BOD5”), total suspended solids (“TSS”), ammonia, copper, fecal coliform, BOD5 percent removal, and suspended solids percent removal. The repeated violations caused the Facility to be in significant non-compliance (“SNC”). A summary of those effluent exceedances is as follows:

City of Salem WWTP Permit Limit Exceedances

Monitoring Period End Date	Outfall	Parameter	Limit Type	DMR Value	DMR Value Unit	Permit Limit	Permit Limit Value
1/31/2019	1	Nitrogen, ammonia total (as N)	MO AVG	10.74	lb/d	6.68	lb/d
1/31/2019	1	Nitrogen, ammonia total (as N)	MO AVG	2.76	mg/L	2	mg/L
1/31/2019	1	Solids, suspended	MO AVG MN	79	%	85	%

		percent removal					
2/28/2019	1	Oxygen, dissolved (DO)	INST MIN	7	mg/L	7.4	mg/L
2/28/2019	1	Nitrogen, ammonia total (as N)	MO AVG	2.44	mg/L	2	mg/L
2/28/2019	1	Copper, total recoverable	MO AVG	0.006	mg/L	0.0057	mg/L
2/28/2019	1	BOD, 5-day, percent removal	MO AVG MN	82	%	85	%
2/28/2019	1	Solids, suspended percent removal	MO AVG MN	78	%	85	%
3/31/2019	1	Copper, total recoverable	MO AVG	0.007	mg/L	0.0057	mg/L
3/31/2019	1	Solids, suspended percent removal	MO AVG MN	83	%	85	%
4/30/2019	1	Solids, suspended percent removal	MO AVG MN	84	%	85	%
6/30/2019	1	Solids, total suspended	MO AVG	35	mg/L	30	mg/L
6/30/2019	1	Solids, total suspended	MO AVG	139.68	lb/d	99.98	lb/d
6/30/2019	1	Solids, suspended percent removal	MO AVG MN	42	%	85	%
10/31/2019	1	BOD, 5-day, percent removal	MO AVG MN	0.00005	%	85	%
10/31/2019	1	Solids, suspended percent removal	MO AVG MN	0.00005	%	85	%
12/31/2019	1	Nitrogen, ammonia total (as N)	MO AVG	7.38	mg/L	2	mg/L
12/31/2019	1	Nitrogen, ammonia total (as N)	MO AVG	7.38	lb/d	6.70	lb/d
12/31/2019	1	Nitrogen, ammonia total (as N)	DAILY MX	7.38	mg/L	4	mg/L
2/29/2020	1	BOD, 5-day, percent removal	MO AVG MN	0.00005	%	85	%
3/31/2020	1	Solids, suspended percent removal	MO AVG MN	78	%	85	%
5/31/2020	1	Nitrogen, ammonia total (as N)	DAILY MX	6.82	lb/d	6.70	lb/d
5/31/2020	1	Nitrogen, ammonia total (as N)	MO AVG	6.82	lb/d	3.30	lb/d
5/31/2020	1	Nitrogen, ammonia total (as N)	MO AVG	1.05	mg/L	1	mg/L

6/30/2020	1	Solids, suspended percent removal	MO AVG MN	0.00005	%	85	%
7/31/2020	1	Nitrogen, ammonia total (as N)	MO AVG	1.24	mg/L	1	mg/L
7/31/2020	1	Nitrogen, ammonia total (as N)	MO AVG	3.98	lb/d	3.30	lb/d
7/31/2020	1	BOD, 5-day, percent removal	MO AVG MN	49	%	85	%
8/31/2020	1	Nitrogen, ammonia total (as N)	MO AVG	4.50	lb/d	3.30	lb/d
8/31/2020	1	Nitrogen, ammonia total (as N)	MO AVG	1.32	mg/L	1	mg/L
8/31/2020	1	BOD, 5-day, percent removal	MO AVG MN	48.5	%	85	%
9/30/2020	1	Nitrogen, ammonia total (as N)	MO AVG	9/75	lb/d	3.30	lb/d
9/30/2020	1	Nitrogen, ammonia total (as N)	MO AVG	2.96	mg/L	1	mg/L
9/30/2020	1	Nitrogen, ammonia total (as N)	DAILY MX	2.96	mg/L	2	mg/L
9/30/2020	1	Nitrogen, ammonia total (as N)	DAILY MX	9.75	lb/d	6.70	lb/d
10/31/2020	1	Solids, suspended percent removal	MO AVG MN	49.5	%	85	%
11/30/2020	1	BOD, 5-day, percent removal	MO AVG MN	48.5	%	85	%
12/31/2020	1	BOD, 5-day, percent removal	MO AVG MN	47	%	85	%
12/31/2020	1	Solids, suspended percent removal	MO AVG MN	74	%	85	%
1/31/2021	1	Solids, suspended percent removal	MO AVG MN	78	%	85	%
2/28/2021	1	BOD, 5-day, 20 deg. C	MO AVG	25.4	mg/L	13	mg/L
2/28/2021	1	Nitrogen, ammonia total (as N)	MO AVG	6.36	mg/L	2	mg/L
2/28/2021	1	Nitrogen, ammonia total (as N)	DAILY MX	6.36	mg/L	4	mg/L
2/28/2021	1	Coliform, fecal general	DAILY MX	4850	#/100 mL	400	#/100 mL
2/28/2021	1	Coliform, fecal general	MO GEOMN	4850	#/100 mL	200	#/100 mL
2/28/2021	1	BOD, 5-day, percent removal	MO AVG MN	61	%	85	%

2/28/2021	1	Solids, suspended percent removal	MO AVG MN	50	%	85	%
3/31/2021	1	Oxygen, dissolved (DO)	INST MIN	6.22	mg/L	7.4	mg/L
3/31/2021	1	BOD, 5-day, 20 deg. C	MO AVG	14.5	mg/L	13	mg/L
3/31/2021	1	Nitrogen, ammonia total (as N)	DAILY MX	29.59	lb/d	13.40	lb/d
3/31/2021	1	Nitrogen, ammonia total (as N)	MO AVG	29.59	lb/d	6.70	lb/d
3/31/2021	1	Nitrogen, ammonia total (as N)	DAILY MX	29.6	mg/L	4	mg/L
3/31/2021	1	Nitrogen, ammonia total (as N)	MO AVG	29.6	mg/L	2	mg/L
3/31/2021	1	BOD, 5-day, percent removal	MO AVG MN	74	%	85	%
4/30/2021	1	Nitrogen, ammonia total (as N)	MO AVG	8.30	lb/d	6.70	lb/d
4/30/2021	1	Nitrogen, ammonia total (as N)	DAILY MX	8.3	mg/L	4	mg/L
4/30/2021	1	Nitrogen, ammonia total (as N)	MO AVG	8.3	mg/L	2	mg/L
4/30/2021	1	Copper, total recoverable	DAILY MX	7.7	mg/L	0.013	mg/L
4/30/2021	1	Copper, total recoverable	MO AVG	7.7	mg/L	0.009	mg/L
4/30/2021	1	Coliform, fecal general	DAILY MX	24196	#/100 mL	400	#/100 mL
4/30/2021	1	Coliform, fecal general	MO GEOMN	24196	#/100 mL	200	#/100 mL
5/31/2021	1	Copper, total recoverable	DAILY MX	3	mg/L	0.013	mg/L
5/31/2021	1	Copper, total recoverable	MO AVG	3	mg/L	0.009	mg/L
5/31/2021	1	Coliform, fecal general	MO GEOMN	226	#/100 mL	200	#/100 mL
6/30/2021	1	Copper, total recoverable	DAILY MX	5.2	mg/L	0.013	mg/L
6/30/2021	1	Copper, total recoverable	MO AVG	5.2	mg/L	0.009	mg/L
7/31/2021	1	Oxygen, dissolved (DO)	INST MIN	7.32	mg/L	7.4	mg/L
8/31/2021	1	Oxygen, dissolved (DO)	INST MIN	6.87	mg/L	7.4	mg/L

2/28/2022	1	Solids, suspended percent removal	MO AVG MN	81	%	85	%
3/31/2022	1	Solids, suspended percent removal	MO AVG MN	73	%	85	%
6/30/2022	1	Solids, suspended percent removal	MO AVG MN	84	%	85	%
7/31/2022	1	Oxygen, dissolved (DO)	INST MIN	6.95	mg/L	7.4	mg/L
8/31/2022	1	Oxygen, dissolved (DO)	INST MIN	7.32	mg/L	7.4	mg/L
8/31/2022	1	Solids, suspended percent removal	MO AVG MN	63	%	85	%
9/30/2022	1	Oxygen, dissolved (DO)	INST MIN	7.13	mg/L	7.4	mg/L
9/30/2022	1	Solids, suspended percent removal	MO AVG MN	83	%	85	%
10/31/2022	1	Solids, suspended percent removal	MO AVG MN	74	%	85	%
12/31/2022	1	Nitrogen, ammonia total (as N)	MO AVG	7.52	lb/d	6.70	lb/d
1/31/2023	1	Nitrogen, ammonia total (as N)	MO AVG	8.79	lb/d	6.70	lb/d
1/31/2023	1	Solids, suspended percent removal	MO AVG MN	79	%	85	%
2/28/2023	1	Nitrogen, ammonia total (as N)	MO AVG	13.22	lb/d	6.70	lb/d
2/28/2023	1	Nitrogen, ammonia total (as N)	MO AVG	3.3	mg/L	2	mg/L
2/28/2023	1	Copper, total recoverable	DAILY MX	4.73	mg/L	0.013	mg/L
2/28/2023	1	Copper, total recoverable	MO AVG	4.73	mg/L	0.009	mg/L
2/28/2023	1	Solids, suspended percent removal	MO AVG MN	25	%	85	%
3/31/2023	1	Solids, total suspended	MO AVG	116.60	lb/d	99.98	lb/d
3/31/2023	1	Nitrogen, ammonia total (as N)	MO AVG	17.75	lb/d	6.70	lb/d
3/31/2023	1	Nitrogen, ammonia total (as N)	MO AVG	3.5	mg/L	2	mg/L
3/31/2023	1	Nitrogen, ammonia total (as N)	DAILY MX	17.75	lb/d	13.40	lb/d
4/30/2023	1	Solids, total	MO AVG	32	mg/L	30	mg/L

		suspended					
4/30/2023	1	Solids, suspended percent removal	MO AVG MN	76	%	85	%
6/30/2023	1	Oxygen, dissolved (DO)	INST MIN	7.01	mg/L	7.4	mg/L
6/30/2023	1	Coliform, fecal general	DAILY MX	2420	#/100 mL	400	#/100 mL
7/31/2023	1	Oxygen, dissolved (DO)	INST MIN	6.95	mg/L	7.4	mg/L
8/31/2023	1	Oxygen, dissolved (DO)	INST MIN	7.05	mg/L	7.4	mg/L

30. Based on the allegations in Paragraph 29, above, EPA concludes that as a result of the identified effluent limitation exceedances, Respondent violated Part A of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a), on at least the dates set forth above.

31. In failing to comply with the effluent limitations contained in Part A of the Permit, Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 2

Failure to Submit Inflow and Infiltration Reports

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

33. Part C.13 of the Permit states that the Respondent shall continue to implement a program to identify and eliminate sources of inflow and infiltration (“I/I”). A written report shall be provided on a quarterly basis, as an attachment to the DMR, detailing what has been performed in relation to the implementation and accomplishments of the I/I elimination program.

34. From at least April 1, 2019 until July 30, 2021, Respondent failed to submit, on a quarterly basis, a written report as an attachment to the DMR detailing what has been performed to identify and eliminate I/I.

35. Based on the allegations in Paragraph 34 above, Respondents violated Part C.13 of the NPDES Permit and Section 301(a) of the CWA, 33 U.S.C. 1311(a), by failing to submit, on a quarterly basis from at least April 1, 2019 until July 30, 2021, a written report as an attachment to the DMR detailing what has been performed to identify and eliminate I/I.

36. In failing to comply with the requirements contained in Part C.13. of the Permit, Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 3

Failure to Follow Sewage Sludge Percent Solids Requirement

37. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
38. Part D.8. of the Permit requires, with exceptions not relevant hereto, that any sewage sludge disposed in a landfill cell shall be non-hazardous material and a minimum of 20 percent solids. If the sewage sludge is not 20 percent solids, then a bulking agent may be used to achieve 20 percent solids before the sewage sludge is weighed in at the landfill.
39. During the Inspection, EPA representatives observed that, according to the Sewage Sludge Management Forms submitted by Respondent to WVDEP, four (4) loads with less than 20 percent solids were sent to a landfill in 2019, four (4) loads with less than 20 percent solids were sent to a landfill in 2020, eleven (11) loads with less than 20 percent solids were sent to a landfill in 2021, and two (2) loads with less than 20 percent solids were sent to a landfill in 2022.
40. Based on the allegations in Paragraph 39, above, Respondent violated Part D.8. of the Permit and Section 301(a) of the CWA, 33 U.S.C. 1311(a), by submitting sewage sludge to a landfill cell for disposal that was not a minimum of 20 percent solids for the periods set forth in Paragraph 39, above.
41. In failing to comply with the requirements contained in Part D.8. of the Permit, Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 4

Failure to Operate Facility as Designed

42. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
43. Part C.12 of the Permit states that the average daily design flow of the WWTP has been established not to exceed 0.4 million gallons per day (“MGD”).
44. During the record review phase of the Inspection, inspectors determined that, according to the Facility’s daily flow sheet that is kept onsite, the Respondent routinely treated more than 0.4 MGD as follows:

Monitoring Period End Date	Outfall	Flow Type	Reported Flow (mgd)
4/30/2019	001	MAX DAILY	0.997
4/30/2019	001	MO AVG	0.576
5/31/2019	001	MAX DAILY	0.8714
5/31/2019	001	MO AVG	0.4909
6/30/2019	001	MAX DAILY	0.8911
6/30/2019	001	MO AVG	0.5206
7/31/2019	001	MAX DAILY	0.8610
7/31/2019	001	MO AVG	0.5183
8/31/2019	001	MAX DAILY	0.9472
8/31/2019	001	MO AVG	0.4762
9/30/2019	001	MAX DAILY	0.5259
10/31/2019	001	MAX DAILY	0.7907
10/31/2019	001	MO AVG	0.4368
11/30/2019	001	MAX DAILY	0.888
11/30/2019	001	MO AVG	0.490
12/31/2019	001	MAX DAILY	0.986
12/31/2019	001	MO AVG	0.645
1/31/2020	001	MAX DAILY	1.041
1/31/2020	001	MO AVG	0.729
2/29/2020	001	MAX DAILY	0.868
2/29/2020	001	MO AVG	0.739
3/31/2020	001	MAX DAILY	0.905
3/31/2020	001	MO AVG	0.696
4/30/2020	001	MAX DAILY	1.027
4/30/2020	001	MO AVG	0.712
5/31/2020	001	MAX DAILY	1.0331
5/31/2020	001	MO AVG	0.7335
6/30/2020	001	MAX DAILY	1.0402
6/30/2020	001	MO AVG	0.5845
7/31/2020	001	MAX DAILY	0.8088
7/31/2020	001	MO AVG	0.4167
8/31/2020	001	MAX DAILY	0.9631
8/31/2020	001	MO AVG	0.5444
9/30/2020	001	MAX DAILY	1.0446
9/30/2020	001	MO AVG	0.4780
10/31/2020	001	MAX DAILY	1.1874
10/31/2020	001	MO AVG	0.4647
11/30/2020	001	MAX DAILY	0.943
11/30/2020	001	MO AVG	0.528

12/31/2020	001	MAX DAILY	1.034
12/31/2020	001	MO AVG	0.730
1/31/2021	001	MAX DAILY	0.923
1/31/2021	001	MO AVG	0.589
2/28/2021	001	MAX DAILY	1.035
2/28/2021	001	MO AVG	0.782
3/31/2021	001	MAX DAILY	0.956
3/31/2021	001	MO AVG	0.699
4/30/2021	001	MAX DAILY	0.948
4/30/2021	001	MO AVG	0.638
5/31/2021	001	MAX DAILY	1.0976
5/31/2021	001	MO AVG	0.6331
6/30/2021	001	MAX DAILY	0.9776
6/30/2021	001	MO AVG	0.5744
7/31/2021	001	MAX DAILY	0.9674
7/31/2021	001	MO AVG	0.4792
8/31/2021	001	MAX DAILY	1.0446
8/31/2021	001	MO AVG	0.4924
9/30/2021	001	MAX DAILY	1.0984
9/30/2021	001	MO AVG	0.5163
10/31/2021	001	MAX DAILY	0.9480
10/31/2021	001	MO AVG	0.4618
11/30/2021	001	MAX DAILY	0.957
11/30/2021	001	MO AVG	0.485
12/31/2021	001	MAX DAILY	1.333
12/31/2021	001	MO AVG	0.631
1/31/2022	001	MAX DAILY	0.914
1/31/2022	001	MO AVG	0.660
2/28/2022	001	MAX DAILY	0.992
2/28/2022	001	MO AVG	0.707
3/31/2022	001	MAX DAILY	0.877
3/31/2022	001	MO AVG	0.666
4/30/2022	001	MAX DAILY	0.948
4/30/2022	001	MO AVG	0.638
5/31/2022	001	MAX DAILY	1.0363
5/31/2022	001	MO AVG	0.5797
6/30/2022	001	MAX DAILY	0.9701
6/30/2022	001	MO AVG	0.4744
7/31/2022	001	MAX DAILY	0.8541
7/31/2022	001	MO AVG	0.4810
8/31/2022	001	MAX DAILY	1.0554
8/31/2022	001	MO AVG	0.5782

9/30/2022	001	MAX DAILY	0.8448
9/30/2022	001	MO AVG	0.5451
10/31/2022	001	MAX DAILY	0.8814
10/31/2022	001	MO AVG	0.4776
11/30/2022	001	MAX DAILY	1.064
11/30/2022	001	MO AVG	0.592
12/31/2022	001	MAX DAILY	0.952
12/31/2022	001	MO AVG	0.656
1/31/2023	001	MAX DAILY	0.914
1/31/2023	001	MO AVG	0.660
2/28/2023	001	MAX DAILY	0.969
2/28/2023	001	MO AVG	0.646
3/31/2023	001	MAX DAILY	0.632
3/31/2023	001	MO AVG	0.945
4/30/2023	001	MAX DAILY	1.344
4/30/2023	001	MO AVG	0.555
5/31/2023	001	MAX DAILY	0.8520
5/31/2023	001	MO AVG	0.5806
6/30/2023	001	MAX DAILY	0.7880
6/30/2023	001	MO AVG	0.4394
7/31/2023	001	MAX DAILY	1.0301
7/31/2023	001	MO AVG	0.5361
8/31/2023	001	MAX DAILY	1.3409
8/31/2023	001	MO AVG	0.6501
9/30/2023	001	MAX DAILY	0.7213
9/30/2023	001	MO AVG	0.4825
10/31/2023	001	MAX DAILY	0.9989
10/31/2023	001	MO AVG	0.4482
11/30/2023	001	MAX DAILY	0.945

45. Based on the allegations in Paragraph 44, above, Respondent violated Part C.12. of the Permit and Section 301(a) of the CWA, 33 U.S.C. 1311(a), by treating more flow than the average daily design flow of the WWTP.

46. In failing to comply with the requirements contained in Parts C.12. of the Permit, Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

CIVIL PENALTY

47. 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-Five Thousand Dollars (\$25,000.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
48. 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 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.
49. Respondent agrees that, within 30 days of the Effective Date of this Consent Agreement and Final Order, Respondent shall make a payment of **Twenty-Five Thousand Dollars (\$25,000.00)** to the "United States Treasury" referencing the case name, address and docket number of this Consent Agreement and Final Order (CWA-03-2024-0061), for the amount of the civil penalty specified above. Respondent shall pay the assessed civil penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website:
<https://www.epa.gov/financial/makepayment>. For additional instructions see:
<https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
50. 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 3 Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

51. 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.
52. 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).
53. 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).
54. 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.
55. 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).
56. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
57. 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 salemwwtp@frontier.com (for Respondent).

V. GENERAL SETTLEMENT CONDITIONS

58. 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.

59. Respondent certifies that 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 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

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

VII. OTHER APPLICABLE LAWS

61. 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 or any regulations promulgated thereunder.

VIII. RESERVATION OF RIGHTS

62. 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

63. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and its 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

64. 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

65. 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.

For Respondent:

City of Salem

By:

A handwritten signature in black ink, appearing to read 'Brandie Garner', written over a horizontal line.

Brandie Garner
Mayor

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 3, 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



REGION 3
PHILADELPHIA, PA 19103

FILED
Sep 26, 2024
9:39 am
U.S. EPA REGION 3
HEARING CLERK

In the Matter of: :
 :
City of Salem :
P.O. Box 352 : **U.S. EPA Docket No. CWA-03-2024-0061**
229 W. Main Street :
Salem, WV 26426 :
 :
Respondent :
 : **Proceeding under Section 309(g) of the Clean**
City of Salem Wastewater Treatment Plant : **Water Act, 33 U.S.C. § 1319(g)**
229 W. Main Street :
Salem, WV 26426 :
NPDES Permit No. WV0020257 :
 :
Facility :
 :
 :

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondent, City of Salem, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of the statutory factors set forth in Section 309(g)(3) of the Clean Water Act ("CWA"), 33 U.S.C.

§ 1319(g), the Interim Clean Water Act Settlement Penalty Policy dated March 1, 1995, which reflects the statutory factors set forth in Section 309(g) of the CWA, and as 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.

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-Five Thousand Dollars (\$25,000.00)** 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 3

Louis F. Ramalho
Senior Assistant Regional Counsel
U.S. EPA, Region 3
Ramalho.Louis@epa.gov

and

Monica Crosby
NPDES Section, Water Branch,
Enforcement and Compliance Assurance Division
U.S. EPA, Region 3
Crosby.Monica@epa.gov

[Digital Signature and Date]

Bevin Esposito
Regional Hearing Clerk
U.S. EPA, Region 3