

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
CITY OF MARTINSBURG	:	U.S. EPA Docket No. CWA-03-2021-0053DN
232 N. QUEEN STREET	:	
MARTINSBURG, WV 25402	:	
Respondent.	:	ADMINISTRATIVE ORDER FOR
	:	COMPLIANCE ON CONSENT
	:	PURSUANT TO 33 U.S.C. § 1319(a)
WASTEWATER TREATMENT PLANT	:	
500 EAST JOHN STREET	:	
MARTINSBURG, WV 25404,	:	
	:	
Facility.	:	
	:	

I. STATUTORY AUTHORITY AND JURISDICTION

1. This Administrative Order on Consent (“AOC or Order”) is issued to the City of Martinsburg, West Virginia (“City” or “Respondent”), under the authority vested in the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). The Administrator delegated this authority to the Regional Administrator of EPA Region III, who further delegated it to the Director of the Enforcement & Compliance Assurance Division, EPA Region III.
2. Section 309(a) of the Act provides, *inter alia*, that: “Whenever, on the basis of information available to [EPA], [EPA] finds that any person is in violation of any condition or limitation [implementing section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title] in a permit issued under section 1342 ... of this title, ... [EPA] shall issue an order requiring such person to comply with such condition or limitation ...” See 33 U.S.C. § 1319(a)(3).
3. EPA has jurisdiction over the above-captioned matter, as described in Paragraphs 1 and 2, above.
4. EPA has consulted with the West Virginia Department of Environmental Protection (“WVDEP”) regarding this action and, subsequent to the Effective Date, EPA will mail a copy of this fully executed AOC to the appropriate WVDEP representative.

II. GENERAL PROVISIONS

5. For the purpose of this proceeding only, Respondent admits each jurisdictional allegation set forth in this AOC.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in Section IV (FINDINGS OF FACT AND CONCLUSIONS OF LAW) of this AOC, below.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution or enforcement of this AOC.
8. The provisions of this AOC shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of the Respondent.
9. Respondent shall bear its own costs and attorney's fees in connection with this proceeding and associated with the implementation or enforcement of this AOC, including any costs related to resolution of any dispute arising regarding this AOC.
10. Issuance of this AOC is intended to address the violations described herein. 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. EPA also reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this AOC, following the Effective Date, as defined below.
11. This AOC does not constitute a waiver or modification of the terms or conditions of any permit issued to either Respondent. Nothing in this Order shall relieve either Respondent of its obligation to comply with all applicable provisions of federal, state, or 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 Order does not constitute a waiver, suspension or modification of the requirements of the Act, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated thereunder.
12. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that either Respondent may have with respect to any issue of fact or law set forth in this AOC, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
13. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.

14. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this AOC and to execute and legally bind the party.
15. By signing this AOC, Respondent acknowledges that this AOC may be available to the public and represents that, to the best of Respondent's knowledge and belief, this AOC does not contain any confidential business information or personally identifiable information from Respondent.
16. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission was 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 either Respondent to the EPA regarding matters relevant to this AOC 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.

III. STATUTORY AND REGULATORY BACKGROUND

17. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the Act.
18. 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.
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. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized WVDEP to administer the NPDES program in the State of West Virginia.

IV. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

21. As a municipality, Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
22. At all times relevant to this AOC, Respondent owned and operated the Martinsburg Wastewater Treatment Plant ("WWTP" or "Facility"), a publicly-owned wastewater

treatment plant located in the City of Martinsburg, Berkeley County, WV. The WWTP discharges treated domestic, commercial, and industrial wastewater to Tuscarora Creek.

23. At all times relevant to this AOC, the operation of the WWTP has been subject to NPDES Discharge Permit No. WV0023167 (“WWTP Permit”), which was issued by WVDEP on January 10, 2018, was effective March 1, 2018, and which expires January 29, 2023.
24. Respondent is authorized to discharge pollutants, in the form of wastewater from the WWTP, to waters of the United States only in accordance with the terms and conditions of the Permit.
25. Tuscarora Creek is a tributary of the Opequon River in Berkeley County, West Virginia, and both Tuscarora Creek and the Opequon River are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
26. At all times relevant to this AOC, the WWTP discharged wastewater into Tuscarora Creek through a “point source” as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
27. On February 11, 2020, representatives of EPA inspected the WWTP for purposes of determining compliance with the Permit (“Inspection”).

Count I
Permittee Discharged Water to Outlet No. 001 in
Exceedance of WWTP Permit Effluent Discharge Limitations

28. Section A.001 of the WWTP Permit establishes effluent discharge limitations, monitoring, and reporting requirements for Outlet No. 001 discharges to Tuscarora Creek. Section A.002 of the Permit defines effluent discharge limitations, monitoring, and reporting requirements for Outlet No. 002 discharges to Tuscarora Creek.
29. Respondent has discharged wastewater from Outlet No. 001 in exceedance of its WWTP Permit’s effluent discharge limitations on multiple occasions since 2017, including repeated aluminum exceedances. There were 35 effluent exceedances during the reporting period from January 1, 2017 to April 22, 2020. A summary of the exceedances identified are set forth in Table 1, below.

Effluent Exceedances					
Table 1. (January 1, 2017 through April 22, 2020)					
Perm Feature ID	Parameter Description	Limit Value	Statistical Base Code	DMR Value	Monitoring Period End Date
001	Nitrogen, ammonia total [as N]	6.8	MO AVG	8.58	01/31/2017
001	Nitrogen, ammonia total [as N]	13.6	DAILY MX	18.4	01/31/2017

001	Coliform, fecal general	400.	DAILY MX	490.	02/28/2017
001	Coliform, fecal general	400.	DAILY MX	600.	05/31/2017
IU02	Solids, total suspended	250.	DAILY MX	543.	08/31/2017
IU02	Aluminum, total [as Al]	10.	DAILY MX	66.6	08/31/2017
001	Coliform, fecal general	400.	DAILY MX	430.	09/30/2017
IU02	Aluminum, total [as Al]	10.	DAILY MX	11.6	10/31/2017
001	Coliform, fecal general	400.	DAILY MX	600.	02/28/2018
IU02	Aluminum, total [as Al]	10.	DAILY MX	16.4	02/28/2018
IU01	Aluminum, total [as Al]	10.	DAILY MX	13.2	03/31/2018
001	Nitrogen, ammonia total [as N]	13.6	DAILY MX	14.9	04/30/2018
001	Coliform, fecal general	400.	DAILY MX	600.	05/31/2018
IU01	Aluminum, total [as Al]	10.	DAILY MX	170.	05/31/2018
IU01	Aluminum, total [as Al]	10.	DAILY MX	15.3	06/30/2018
IU01	Aluminum, total [as Al]	10.	DAILY MX	21.8	07/31/2018
002	Coliform, fecal general	400.	DAILY MX	600.	08/31/2018
001	Toxicity [chronic], Ceriodaphnia dubia	1.3	MO AVG	2.	09/30/2018
001	Coliform, fecal general	400.	DAILY MX	600.	12/31/2018
IU01	Lead, total [as Pb]	.02	DAILY MX	.028	12/31/2018
IU01	Aluminum, total [as Al]	10.	DAILY MX	302.	12/31/2018
IU02	Aluminum, total [as Al]	10.	DAILY MX	18.1	01/31/2019
001	Nitrogen, total [as N]	45662.	ANNL TOT	57644.	02/28/2019
IU01	Aluminum, total [as Al]	10.	DAILY MX	23.	04/30/2019
IU01	Aluminum, total [as Al]	10.	DAILY MX	50.9	05/31/2019
IU01	Aluminum, total [as Al]	10.	DAILY MX	229.	06/30/2019
IU01	Aluminum, total [as Al]	10.	DAILY MX	26.	07/31/2019
IU01	Aluminum, total [as Al]	10.	DAILY MX	34.2	08/31/2019
IU01	Aluminum, total [as Al]	10.	DAILY MX	62.4	09/30/2019
001	Nitrogen, ammonia total [as N]	3.4	MO AVG	7.08	10/31/2019
001	Nitrogen, ammonia total [as N]	6.8	DAILY MX	23.5	10/31/2019
IU01	Aluminum, total [as Al]	10.	DAILY MX	42.8	10/31/2019
IU01	Aluminum, total [as Al]	10.	DAILY MX	10.3	11/30/2019
001	BOD, 5-day, 20 deg. C	60.	DAILY MX	74.4	12/31/2019
001	Coliform, fecal general	400.	DAILY MX	570.	12/31/2019

30. Based on the above assertions and allegations, EPA concludes that Respondent violated Section A.001 of the WWTP Permit during the periods set forth in Table 1, above.

Count II

Outlet No. 001 had Characteristics prohibited by the WWTP Permit

31. Section C.22 of the WWTP Permit states, “Certain characteristics of sewage, industrial wastes, and other wastes cause pollution and are objectionable in all waters of the State. Certain general conditions are not allowed in any waters of the State. Therefore, the effluent discharge from the permittee’s treatment facility shall not cause violation of any of the following conditions not allowed in State waters as stated below... f) Distinctly visible color... g) Algae blooms or concentrations of bacteria that may impair or interfere with the designates uses of the affected waters.”

32. At the time of the Inspection, there was red staining and algae growth present in Tuscarora Creek at Outlet No. 001 and immediately downstream. EPA Inspectors also noted red/copper colored foam present in the shared outlet chamber for the three chlorine contact chambers.
33. Based on the above assertions and allegations, EPA concludes that Respondent violated Section C.22 of the WWTP Permit on at least February 11, 2020.

Count III
Respondent was not Operating and Maintaining
the WWTP as required by the WWTP Permit

34. The WWTP Permit details the plant as being comprised of “two (2) high flow band screens, two (2) grit traps and classifiers, four (4) vertical turbine solids handling pumps, two (2) primary clarifiers with a volume of 340,000 gallons each and a surface area of 5,026 square feet each, chemical feed facilities, three (3) moving bed biological reactors with each train having a pre-anoxic reactor, a swing reactor, two (2) nitrification reactors, an internal recycle, a post-anoxic reactor, and a reaeration reactor, two (2) secondary clarifiers – one (1) with a volume of 526,400 gallons and a surface area of 5,026 square feet and one (1) with a volume of 338,400 gallons and a surface area of 5,026 square feet, three (3) chlorine contact chambers with a volume of 54,400 gallons each, dechlorination facilities, mechanical sludge thickeners, two (2) anaerobic digesters with a volume of 281,900 gallons each, aerated/mixed liquor sludge storage, two volute sludge dewatering units, and all requisite appurtenances.”
35. Appendix A.II of the WWTP Permit states, “The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.”
36. At the time of the Inspection, the following conditions indicated that the Respondent was not properly operating and maintaining all facilities and systems of treatment and control (and related appurtenances) in compliance with the conditions of this WWTP Permit:
 - a. The Pre-anoxic Reactor No. 2 of the moving bed biological reactor (“MBBR”) system contained significantly less media than Pre-anoxic Reactor Nos. 1 and 3.
 - b. The scum trough on Secondary Clarifier No. 2 was flooded, and pieces of broken MBBR media were present in the flooded scum trough.
 - c. There was substantial snail shell accumulation in each of the three internal recycle areas of the MBBR system.
 - d. The standby chlorine contact chamber was not available for use at the time of the inspection, as it was being utilized to store sodium hypochlorite. There did not appear to be any backup chlorine contact chamber if the main chlorine contact chamber needed maintenance.

- e. A 260-gallon in-plant spill from the band screens located at headworks had resulted in raw sewage discharging to Tuscarora Creek on February 6, 2020. This spill was caused by debris blocking the band screen.
 - f. Concrete around various guardrail posts at the MBBR system appeared to be cracking.
 - g. The baffle rings on both the primary and secondary clarifiers were uneven and appeared warped.
37. Based on the above assertions and allegations, EPA concludes that Respondent violated Appendix A.II of the WWTP Permit on at least February 11, 2020.

Count IV
Average Monthly Flow Exceedances in November 2018 through
March 2019 Were Not Addressed Through a Plan of Action

38. Section C.14 of the WWTP Permit requires that the Permittee submit a Plan of Action if the average monthly flow reported at Outlet No. 001 exceeds 90 percent of design flow, which would be greater than (>) 2.7 Million Gallons per Day (“MGD”), for three consecutive monthly periods.
39. The average monthly flow reported at Outlet No. 001 exceeded 2.7 MGD for the months of November 2018 through March 2019. During that time period, average monthly flows were reported between 4.06 and 3.29 MGD. Respondent did not submit a Plan of Action to address these average monthly flow exceedances, as required by the Permit.
40. Based on the above assertions and allegations, EPA concludes that Respondent violated Section C.14 of the WWTP Permit from November 2018 through some time subsequent to February 11, 2020.
41. Based on the above assertions and allegations in Paragraphs 1 through 40, the Respondent has failed to comply with the terms and conditions of the WWTP Permit and, therefore, has violated Section 301 of the CWA, 33 U.S.C. § 1311.

V. COMPLIANCE ORDER

Therefore, Respondent is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to conduct, and consents to conduct, the following activities:

42. Within sixty (60) days of the Effective Date of the AOC, the Respondent shall provide to EPA for review a Corrective Action Plan (“CAP”), which meets the requirements set forth in this AOC. The CAP shall include, at a minimum, plans and a schedule for implementing corrective actions to address the following:
- a. A plan and schedule for implementing corrective actions to address effluent violations for the time period of January 2017 to April 2020 for the following parameters: 1) Nitrogen, ammonia total; and 2) Fecal Coliform.

- b. A plan and schedule for implementing corrective actions to address prohibited characteristics of the outfall, including the cause of the red staining and the algae growth.
 - c. A plan and schedule for implementing corrective actions to address the following Operation and Maintenance items:
 - i. The MBBR system contained significantly less media than Pre-anoxic Reactor Nos. 1 and 3.
 - ii. There was substantial snail shell accumulation in each of the three internal recycle areas of the MBBR system.
 - iii. Debris blocking the band screens, which caused a 260-gallon in-plant spill from the band screens located at the headworks and resulted in raw sewage discharging to Tuscarora Creek on February 6, 2020.
 - iv. Cracks in the concrete around various guardrail posts at the MBBR system.
 - v. Baffle rings on both the primary and secondary clarifiers were uneven and appeared warped.
 - d. Photographs of correction of the orientation of the signage at Outlet No. 002.
 - e. Up-to-date Stormwater Water Management Plan (“SWPPP”) as identified in Section C.26, C.27, and C.28 of the Permit.
43. The schedule to implement the corrective actions identified in the CAP shall not exceed two (2) years from the Effective Date of this AOC.
44. EPA will review the CAP and make a determination of completeness, based on the requirements described in Paragraphs 42 and 43, above. If EPA determines that the CAP is not complete or adequate, EPA shall notify Respondent in writing and Respondent shall resubmit an updated CAP within forty-five (45) days of Respondent’s receipt of EPA’s notice. Upon a determination of completeness as provided in writing by EPA to the Respondent, Respondent will implement the CAP in full. Upon a determination of completeness as provided in writing by EPA to the Respondent, Respondent will implement the CAP in full.
45. Respondent shall submit a notice to EPA within thirty (30) days once all work as identified in and required by the CAP has been completed.
46. Within 180 days of the Effective Date of the AOC, Respondent shall submit to EPA a Preventative Maintenance Plan (“PMP”). This PMP will detail the specific preventative maintenance requirements for each primary treatment, secondary treatment, and disinfection process or other equipment critical for optimal plant operation. As part of the preventative maintenance for each treatment process, include daily, weekly, or monthly

schedules to be followed by the plant operator that prescribe Preventative Maintenance procedures, including, at a minimum, calibration, lubrication, cleaning and replacement of equipment. Each item identified in Paragraph 42, above, that has a corrective action shall have a corresponding preventative action described in the PMP. The PMP shall also include a process for regularly inspecting and correcting any issues identified at Tuscarora Creek at Outlet No. 001 for any prohibited characteristics which may be present due to the facility's discharges.

- 47. EPA will review the PMP and make a determination of completeness, based on the requirements described in Paragraph 46, above. Upon a determination of completeness as provided in writing by EPA to the Respondent, Respondent will begin implementation of the PMP.

VI. PROCEDURES FOR SUBMISSIONS

- 48. All documents required to be submitted by this Order and any Request for Termination shall be accompanied by a certification signed by a responsible officer, as defined in 40 CFR § 122.22(d), that reads as follows:

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.

Signed _____

Title: _____

Date: _____

- 49. Respondent may assert a business confidentiality claim covering part or all of the information which this AOC requires it to submit to EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. The EPA will disclose information submitted under a confidentiality claim only as provided in Part 2 Subpart B of Title 40 of the C.F.R. If, at the time any information is submitted to EPA, the Respondent submitting such information does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to either Respondent.

- 50. Unless otherwise directed in writing, Respondent shall submit any submission or written communication, including any accompanying data, relating to this AOC via email to:

Email: greenwald.michael@epa.gov
Mr. Michael Greenwald
NPDES Enforcement

Enforcement and Compliance Assurance Division
U.S. EPA, Region III

Any information submitted electronically shall be submitted in a widely recognized electronic format.

**VII. CERTIFICATION OF COMPLIANCE AND
REQUEST FOR TERMINATION OF AOC**

51. Upon completion of all items required by the CAP and a determination of completeness of each item, and after two (2) years' implementation of the PMP, Respondent shall submit to EPA a Certification of Compliance and Request for Termination of this AOC. Such certification and request shall include:
 - a. a certification that Respondent has maintained compliance with this AOC for the term of this AOC; and
 - b. all necessary documentation, including photo documentation as appropriate, to support a finding that Respondent has complied with Section VI (Compliance Order) of this AOC.
52. If, following review of any Certification of Compliance and Request for Termination of this AOC, EPA agrees that Respondent has adequately complied with all requirements of this AOC, then EPA may, in its unreviewable discretion, provide written notification of termination of this AOC.

VIII. AOC MODIFICATIONS

53. Any request to modify the terms of, or parties to, this AOC shall be submitted, in writing, by Respondent to EPA and shall be subject to review and approval by EPA, in its sole and unreviewable discretion. Respondent's submission of a written request for modification of this AOC shall not relieve Respondent of any obligation under this AOC and shall have no effect on EPA's statutory or regulatory authority to enforce the terms of this AOC, in its sole and unreviewable discretion.

IX. CHANGE OF OWNERSHIP OR OPERATION OF THE WWTP

54. Until or unless this AOC is modified or terminated, in accordance with the terms of this AOC, Respondent shall remain responsible for compliance with the terms of this AOC following any transfer of ownership or operation of the WWTP.
55. At least ninety (90) days prior to any transfer of ownership or operation of the WWTP, Respondent shall submit a written notification to EPA of any such anticipated change in ownership or operation of the WWTP (Notification of Change of Martinsburg WWTP Ownership or Operation). Each such Notification of Change of Martinsburg WWTP Ownership or Operation shall include, at a minimum, a detailed summary of the anticipated change in ownership or operation, contact information for the proposed new owner or operator of the WWTP and a schedule for such anticipated change.

56. Respondent shall condition any sale or transfer of ownership or operation of the WWTP, in whole or in part, upon the execution by such Prospective Third Party Purchaser, or Transferee, of an agreement, which creates an obligation that shall survive the closing of such sale or transfer, of the WWTP, whereby such Prospective Third Party Purchaser or Transferee agrees to comply with and be bound by the terms of this AOC.

X. EFFECTIVE DATE

57. This AOC will become effective upon the Respondent's receipt of a fully-executed copy of this AOC.

FOR CITY OF MARTINSBURG

By:



Mayor Kevin Knowles

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

By: _____

Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. Environmental Protection Agency, Region III