

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). On August 17, 2022, 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

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), EPA authorized the State of West Virginia NPDES program on May 10, 1982. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), the WVDEP is authorized to administer the NPDES program in the State of West 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 State of West Virginia for NPDES permit violations.

16. Central Hampshire PSD 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 Frenchburg Wastewater Treatment Plant (“WWTP” or “Facility”) located in Augusta, WV. The WWTP discharges treated domestic wastewater from the Facility into Little Cacapon River, which flows into the Potomac River.

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. WV0081850 (“Permit”) issued by WVDEP on November 2, 2016, that became effective on January 1, 2017, with an expiration date of June 30, 2020 (the “2016 Permit”). On April 28, 2020, WVDEP reissued the Permit that became effective on June 1, 2020, with an expiration date of April 27, 2025 (the “2020 Permit”).

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. Little Cacapon River and the Potomac River are waters 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 the Little Cacapon River which flows into the Potomac River 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 17, 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 the 2016 Permit defines effluent discharge limitations and monitoring requirements for Outfall 001. The Facility has had 3 effluent exceedance violations at Outfall 001 under the 2016 Permit since March 31, 2019.

Monitoring Period Date	Parameter Description	Limit Type	DMR Value	Limit Value	Limit Value Unit
3/31/2019	Coliform, fecal general	MO GEOMN	807	200	#/100mL
3/31/2019	Coliform, fecal general	DAILY MX	2419.6	400	#/100mL
4/30/2020	Solids, suspended percent removal	MO AV MN	84	85	%

27. Based on the allegations in Paragraph 26, 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 three (3) effluent limitations contained in the Permit on March 31, 2019 and April 30, 2020.

28. 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
Failure to Sample in Accordance with Permit Requirements

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

30. Section A.001 of the Permit states, “Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location(s): Effluent BOD5 samples shall be collected at a location immediately preceding disinfection. All other effluent samples shall be collected at, or as near as possible to, the point of discharge.”

31. Appendix A, Section III.3 of the Permit states, “Samples shall be taken, preserved and analyzed in accordance with the latest edition of 40 CFR Part 136, unless other test procedures have been specified elsewhere in this permit.” Table II in 40 CFR 136 requires biochemical oxygen demand (“BOD”) and total suspended solids (“TSS”) samples to be preserved by cooling to ≤6°C.

32. On at least June 17, 2021, the Permittee was collecting effluent biochemical oxygen demand (BOD) samples at Outlet 001 after disinfection and not at a location immediately preceding disinfection as required by Section A.001 of the Permit.

33. On at least June 17, 2021, the Permittee was improperly collecting influent BOD composite samples by placing grab samples taken each hour in a common bucket that was not being placed on ice or refrigerated during the 8-hour composite period as required by Appendix A, Section III.3 of the Permit.

34. Based on the allegations in Paragraphs 32 and 33, above, Respondent violated Section A.001 and Appendix A, Section III.3 of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a), by failing to perform sampling in accordance with the Permit requirements to: (1) collect BOD samples from a location immediately preceding disinfection; and (2) preserve BOD and TSS samples by cooling to $\leq 6^{\circ}\text{C}$.

35. In failing to comply with the requirements in Section A.001 and Appendix A, Section III.3 of the Permit to perform sampling as described in Paragraphs 30 and 31, 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 **Seven Thousand Five Hundred Dollars (\$7,500)**, 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-03-2023-0001*;

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.

42. 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 williamrohrbaugh@outlook.com and central.water77@yahoo.com (for Respondent).

V. GENERAL SETTLEMENT CONDITIONS

43. 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.

44. 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

45. 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

46. 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

47. 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

48. 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

49. 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

50. 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:

Central Hampshire PSD

By: 
Richard Wood
Board Chairman

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

of **Seven Thousand Five Hundred Dollars (\$7,500)** 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

Richard Wood, Chairman
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[Digital Signature and Date]
Bevin Esposito
Regional Hearing Clerk
U.S. EPA, Region III