



REGION 3

PHILADELPHIA, PA 19103

FILED

Sep 25, 2024

8:55 am

**U.S. EPA REGION 3
HEARING CLERK**

In the Matter of:

Mountain Top Public Service District
P.O. Box 236
Mount Storm, WV 26739

U.S. EPA Docket No. CWA-03-2024-0110DN

Respondent.

Mountain Top Public Service District
4150 Bismarck Road
Mount Storm, WV 26739
NPDES Permit No. WV0101524

**ADMINISTRATIVE ORDER ON CONSENT
PURSUANT TO 33 U.S.C. § 1319(a)**

Facility.

I. STATUTORY AUTHORITY AND JURISDICTION

1. This Administrative Order on Consent ("AOC" or "Order") for compliance is issued to the Mountain Top Public Service District ("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 3, who further delegated it to the Director of the Enforcement & Compliance Assurance Division, EPA Region 3.
2. Section 309(a) of the Act provides, among other things, 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 301, 302, 306, 307, 308, 318, or 405 of this title] in a permit issued under section [402] ... 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. The EPA has jurisdiction over the above-captioned matter, as described in Paragraphs 1 and 2, above.

4. The EPA has consulted with the West Virginia Department of Environmental Protection (“WVDEP”) regarding this action and, subsequent to the Effective Date, EPA will provide a copy of this fully executed AOC to the appropriate WVDEP representative.

II. GENERAL PROVISIONS

5. For purposes of this proceeding, Respondent admits the jurisdiction allegations 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 this AOC.
7. 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.
8. Respondent shall bear its own costs and attorneys’ 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.
9. 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 the EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. The EPA also reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. § 1251 – 1389, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, the 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 the EPA has jurisdiction, to enforce the provisions of this AOC, following the Effective Date, as defined below.
10. This AOC does not constitute a waiver or modification of the terms or conditions of any permit issued to Respondent. Nothing in this Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local laws and regulations, nor shall it restrict the 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 – 1389, or any regulations promulgated thereunder.
11. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that 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.

12. The EPA reserves all existing inspection authority otherwise available to the EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
13. The undersigned representative of Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this AOC and to execute and legally bind the Respondent.
14. 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.
15. Respondent certifies that any information or representation it has supplied or made to the 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. The EPA shall have the right to institute further actions to recover appropriate relief if the EPA obtains evidence that any information provided and/or representations made by 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 the 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.
16. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the tasks set forth in Section V of this AOC (Compliance Order) is deemed restitution, remediation, or required to come into compliance with the law.

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, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, 1342, and 1344.
18. 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.

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), the EPA authorized WVDEP to administer the NPDES program in the State of West Virginia.
21. Pursuant to Section 402(i) of the CWA, 33 U.S.C. §1342(i), the EPA retains its authority to take enforcement action within West Virginia for NPDES permit violations.

IV. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

22. As a public sewer district, Respondent is a “municipality,” and a “person” within the meaning of Section 502(4) and (5) of the Act, 33 U.S.C. § 1362(4) and (5).
23. At all times relevant to this AOC, Respondent owned and operated three domestic wastewater treatment systems in Bayard, West Virginia, Gorman, West Virginia and Elk Garden, West Virginia. (Collectively referred to as “Facility” or “WWTP”). These three systems are operated pursuant to Permit No. WV0101524 and discharge domestic wastewater as follows: 1) Bayard (outlet 001) into the North Branch of the Potomac River, 2) Gorman (outlet 002) into the North Branch of the Potomac River, and Elk Garden (outlet 003) into an unnamed tributary of Deep Run (a tributary of the North Branch of the Potomac River).
24. At all times relevant to this AOC, the operation of the WWTPs has been subject to West Virginia NPDES Discharge Permit No. WV0101524 (“Permit”), which was renewed by WVDEP on May 6, 2022, became effective on July 1, 2022, and has an expiration date of May 5, 2027.
25. Respondent is authorized to discharge pollutants, in the form of wastewater from the WWTPs, to waters of the United States only in accordance with the terms and conditions of the Permit.
26. At all times relevant to this AOC, the WWTPs discharged wastewater to the North Branch of the Potomac River, and through an unnamed tributary of Deep Run (a tributary of the North Branch of the Potomac River), through 3 “point sources,” as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
27. The North Branch of the Potomac River is a navigable water, and the unnamed tributary to Deep Run is a relatively permanent water connected to the North Branch of the Potomac River, and both are therefore waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

28. On December 7, 2022, representatives of the EPA inspected the WWTPs for purposes of determining compliance with the Permit (“Inspection”).

Count 1
Effluent Exceedances

29. Part I.A.1 of the Permit sets forth the effluent limits under the Permit.
30. There were a total of eleven (11) effluent exceedances from September 30, 2020 to September 30, 2022 that were reported in Respondent’s discharge monitoring reports (“DMRs”). The parameters exceeded include biological oxygen demand, 5-day (“BOD5”), total suspended solids (“TSS”), nitrogen, and fecal coliform. The repeated violations caused the Facility to be in significant non-compliance (“SNC”). A summary of those effluent exceedances is as follows:

Effluent Limit Exceedances for Bayard Facility- Outlet 001

Monitoring Period Date	Parameter Description	Limit Type	DMR Value	Permit Limit	Units
07/31/2021	Coliform, Fecal	Monthly Geometric Mean	8664	200	#/100mL
07/31/2021	Coliform, Fecal	Daily Maximum	8664	400	#/100mL
08/31/2022	Total Suspended Solids	Monthly Average	27.52	12.5	Lbs./d
08/31/2022	Total Suspended Solids	Daily Maximum	27.52	25	Lbs./d

Effluent Limit Exceedances for Gormanian Facility- Outlet 002

Monitoring Period Date	Parameter Description	Limit Type	DMR Value	Permit Limit	Units
09/30/2020	Nitrogen, Kjeldahl Total	Monthly Average	23.1	18	mg/L
03/31/2021	Coliform, Fecal	Monthly Geometric Mean	5300	200	#/100mL
03/31/2021	Coliform, Fecal	Daily Maximum	5300	400	#/100mL
06/30/2021	BOD, 5-day, 20 Deg. C	Monthly Average	32.6	30	mg/L
09/30/2022	Total Suspended Solids	Monthly Average	36.5	30	mg/L
09/30/2022	Nitrogen, Kjeldahl Total	Monthly Average	22	18	mg/L

Effluent Limit Exceedances for Elk Garden Facility- Outlet 003

Monitoring Period Date	Parameter Description	Limit Type	DMR Value	Permit Limit	Units
09/30/2021	Total Suspended Solids	Monthly Average	34	30	mg/L

31. Based on the above allegations, Respondent violated Parts: A.001, A.002, and A.003 of the Permit by failing to comply with the effluent limitations contained in the Permit on eleven (11) occasions from September 30, 2020, to September 30, 2022.

32. In failing to comply with the effluent limitations contained in Part A of the Permit, Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311.

Count 2

Failure to Properly Sample and Monitor

33. Parts A.001, A.002, and A.003 of the Permit each require, “[e]ffluent BOD5 samples shall be collected at a location immediately preceding disinfection.” However, effluent BOD5 samples are collected by the Permittee after chlorination, but prior to dechlorination at the Bayard facility, and collected after dechlorination at the both the Gormanian and Elk Garden facility. Thus, sample collection was improper pursuant to the Permit.
34. Composite samples are required to be obtained as 8-hour composites, according to Parts A.001, A.002, and A.003 of the Permit. Further, Appendix A., Part III.7.d of the Permit defines “composite sample” as, “a combination of individual samples obtained at regular intervals over a time period. Either the volume of each individual sample is proportional to discharge flow rates or the sampling interval (for constant volume samples) is proportional to the flow rates over the time period used to produce the composite.”
35. Part A.001, A.002, and A.003 of the Permit required flow-proportional composite samples, and Respondent collected time-proportional composite samples. The composite sampler was supposed to be programed to collect the same volume of aliquot over a defined period. The volume of the composite sample jug was not adequate to collect a full 8-hour composite sample, as the sampler was programed to collect a 100 ml aliquot every five minutes. Sampling stops once the jug is full, and based upon the settings at the date of the Inspection, during an 8-hour timeframe the sampler would collect a total volume of 9.6 L. Based upon an approximate conversion rate of 3.785 liters per gallon, this would equal an approximate volume of 2.5 gallons. While there was no visible label on the sample jug to indicate the volume of the jug, per the product specifications page in the instruction manual for the Global Water WS700, which was the make and model of the sampler, the volume of the sample jug is 2 gallons. Thus, it would be unable to hold the full 2.5 gallons collected over an 8-hour timeframe, as required under the Permit.
36. In failing to properly sample, as required by Parts A.001, A.002, and A.003 of the Permit, Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311.

Count 3

Failure to Properly Operate and Maintain the WWTP

37. Appendix A, Part II.1 of the Permit requires, “[t]he 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. Proper operation and maintenance also includes adequate laboratory controls, and appropriate quality assurance procedures. Unless otherwise required by Federal or State law, this provision requires the operation of back-up auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit.”
38. The EPA representatives observed multiple issues with operation and maintenance (“O & M”) at each of the three facilities, detailed more fully below:
- a. Lack of formal, written, standard operating procedures (“SOPs”) for O & M of each of the three facilities;
 - b. Lack of a work order system to comprehensively track corrective and preventative maintenance activities;
 - c. Lack of a logbook denoting daily O & M activities in a narrative format;
 - d. Lack of telemetry to remotely monitor the facilities or otherwise notify operators of equipment failure or other adverse operating conditions during unmanned hours.
 - e. Lack of process control sampling for settleable solids and clarifier sludge blanket levels;
 - f. Sludge is not wasted based on a specific sludge blanket level, or other formal process control parameters;
 - g. Floating solids/sludge was observed inside clarifiers and adjacent to clarifier effluent weirs at all three facilities, with biological growth present at Gormanian facility;

- h. Biological growth present on the outlet marker at Bayard facility, so that a portion of the text was not legible;
 - i. The Elk Garden facility lacked a source of water in the winter for cleaning equipment/process units; and
 - j. The Bayard facility is required under the Permit to utilize a comminutor, which was not observed at the time of the inspection.
39. Based on the above allegations, Respondent violated Appendix A, Part II.1 of the Permit by failing to properly operate and maintain the Facility.
40. In failing to comply with the requirements in Appendix A, Part II.1 of the Permit, Respondent 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:

41. Within ninety (90) days of the Effective Date of the AOC, the Respondent shall provide to the EPA for review, proof of minor permit modification to have the Bayard facility comminutor removed from the Permit, or that it has been reinstalled and is functioning as required by the Permit.
42. Within one hundred twenty (120) days of the Effective Date of the AOC, the Respondent shall provide to the EPA for review a Corrective Action Plan ("CAP") to address effluent exceedances at the Facility. The CAP shall include, at a minimum, a plan and a schedule to correct all effluent exceedances at the three facilities, to be completed within twelve months (12) months of the EPA's acceptance of the CAP.

43. After review of the CAP:
- a. The EPA will, in writing: (i) accept the submission; (ii) accept the submission upon specified conditions; (iii) accept part of the submission and request resubmission of the remainder; or (iv) request a new submission.
 - b. If the submission is accepted by the EPA, Respondent shall take all actions required by the CAP, in accordance with the schedule and requirements of the CAP, as approved. If the CAP is conditionally accepted or accepted only in part by the EPA, Respondent shall, upon written direction from the EPA, take all actions required by the accepted CAP that the EPA determines are technically severable from any unacceptable portions.
 - c. If the CAP is unacceptable in whole or in part, Respondent shall, within thirty (30) days, or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the CAP, or any unacceptable portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is accepted in whole or in part, Respondent shall proceed in accordance with the preceding Paragraph.
 - d. CAP Deadlines. No later than twenty (20) days from the EPA's acceptance of the CAP, Respondent shall submit to the EPA for review a list of deadlines included in the CAP. The list shall be submitted in an electronic format (e.g., unlocked spreadsheet or similar format agreed to by the Parties). Within ten (10) days of modification of any deadline under the CAP, Respondent shall provide an updated list reflecting changes to the future schedule.
44. Respondent shall submit a notice to the EPA within thirty (30) days of completing a scheduled event in the CAP until all work as identified in and required by the CAP has been completed.
45. Within ninety (90) days of the Effective Date of the AOC, the Respondent shall develop and provide to the EPA a written O&M Manual. The O&M Manual shall include but is not limited to:
- a. NPDES Permit Overview including monitoring requirements, location of sampling or monitoring sites, sampling/reporting forms, and instructions for reporting and recordkeeping, and other best practices for housekeeping.

- b. Description of Wastewater Treatment and Associated Process Equipment.
- c. Inventory List of property, service lines, equipment, tools, and instruments; include manufacturer, model, serial number, and condition.
- d. Lists of daily, weekly, monthly, quarterly, and/or annual maintenance tasks to be performed. Log sheets for recording maintenance performed.
- e. Plan for inspection, cleaning, and maintenance of equipment and outfall channels.
- f. Plan for annual training staff and standards for reporting samples.
- g. Emergency Response Plan: (1) Flow charts for operators to handle specific problems (main breaks, chlorine leaks, chemical spills); (2) Names and phone/fax numbers of state and local responders (police, fire, hazmat, county, etc.) (3) Names/numbers of county and state agencies to call if waterborne disease outbreak or other health emergency.

VI. PROCEDURES FOR SUBMISSIONS

46. 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: _____

47. Respondent may assert a business confidentiality claim covering part of all the information which this AOC requires it to submit to the 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 the EPA, Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.
48. 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: Desandro.Erin@epa.gov
Ms. Erin Desandro
NPDES Enforcement Officer
Enforcement and Compliance Assurance Division
U.S. EPA, Region 3

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

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

49. Upon completion of all items required by the CAP and a determination of completeness of each item, Respondent shall submit to the 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 V (Compliance Order) of this AOC.
50. If, following review of any Certification of Compliance and Request for Termination of this AOC, the EPA agrees that Respondent has adequately complied with all requirements of this AOC, then the EPA may, in its unreviewable discretion, provide written notification of termination of this AOC.

VIII. AOC MODIFICATIONS

51. Any request to modify the terms of, or parties to, this AOC shall be submitted, in writing, by Respondent to the EPA and shall be subject to review and approval by the 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 the 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

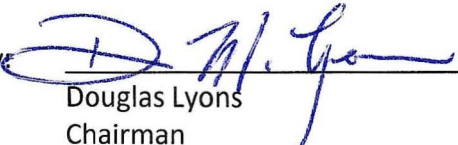
52. Until or unless this AOC is modified or terminated, in accordance with the terms of this AOC, Respondent shall remain responsible for compliance with the terms of this AOC following any transfer of ownership or operation of the WWTP.
53. At least ninety (90) days prior to any transfer of ownership or operation of the WWTP, Respondent shall submit a written notification to the EPA of any such anticipated change in ownership or operation of the WWTP (Notification of Change of Ownership or Operation). Each such Notification of Change of 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.
54. 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

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

Mountain Top Public Service District

Date: 8/21/24

By: 
Douglas Lyons
Chairman

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

By:

[Digital Signature and Date]

Karen Melvin, Director

Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency, Region 3

In the Matter of:	:	U.S. EPA Docket No. CWA-03-2024-0110DN
	:	
Mountain Top Public Service District	:	
P.O. Box 236	:	
Mount Storm, WV 26739	:	
	:	ADMINISTRATIVE ORDER ON CONSENT
Respondent	:	PURSUANT TO 33 U.S.C. § 1319(a)
	:	
Mountain Top Public Service District	:	
4150 Bismarck Road	:	
Mount Storm, WV 26739	:	
NPDES Permit No. WV0101524	:	
	:	
Facility.	:	
	:	

CERTIFICATE OF SERVICE

I certify that by the date of signature the foregoing Administrative Order on Consent, was filed with the EPA Region 3 Regional Hearing Clerk. I further certify that on the date set forth below, a true and correct copy of the foregoing was sent to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email and UPS, signature requested, to:

Mr. Douglas Lyons
Chairman
Mountain Top Public Service District
PO Box 236
Mount Storm, West Virginia 26739

Lauren J. Zarrillo
Assistant Regional Counsel
U.S. EPA, Region 3
Zarrillo.lauren@epa.gov

Erin Desandro
NPDES Enforcement – Water Branch, Enforcement and Compliance Assurance Division
U.S. EPA, Region 3
Desandro.Erin@epa.gov

[Digital Signature and Date]

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