

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

In the Matter of:	:
	:
CITY OF MARTINSBURG	: U.S. EPA Docket No. CWA-03-2021-0054DN
232 N. QUEEN STREET	:
MARTINSBURG, WV 25402	:
	: ADMINISTRATIVE ORDER ON CONSENT
Respondent.	: PURSUANT TO 33 U.S.C. § 1319(a)
	:
MUNICIPAL SEPARATE STORM	:
SEWER SYSTEM,	:
	:
Facility.	:
	:
	:

I. PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency ("EPA") has made the following findings of fact and issues this Administrative Order on Consent ("AOC") pursuant to the authority vested in the Administrator of EPA under 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 CWA, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain sections of the CWA, in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, he shall issue an order requiring such person to comply with such section or requirement.
3. EPA has jurisdiction over the above-captioned matter, as described in Paragraphs 1 and 2, above.
4. The City of Martinsburg ("Respondent") has agreed to the issuance of this AOC.

5. EPA has consulted with the State of 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. STATUTORY AND REGULATORY BACKGROUND

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the CWA, 33 U.S.C. § 1342.
7. Section 402 of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA, or a state upon approval by EPA, may issue permits under the 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.
8. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA authorized the WVDEP to issue NPDES permits in the State of West Virginia.
9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the CWA, 33 U.S.C. § 1342(a).
10. 40 C.F.R. § 122.2 states, in relevant part: “Discharge of a pollutant means: a) any addition of any ‘pollutant’ or combination of pollutants to waters of the United States from any point source. . . . This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. . . .”
11. “Storm water” (or “stormwater”) is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
12. 40 C.F.R. § 122.26(b)(8)(i) defines the term “municipal separate storm sewer system” or “MS4” as including, inter alia, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.”

13. 40 C.F.R. § 122.26(b)(16) defines the term “small municipal separate storm sewer system” as “all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . .; [and] (ii) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems.”
14. 40 C.F.R. § 122.26(b)(17) defines the term “Small MS4” as “a small municipal separate storm sewer system.”
15. Small MS4s are regulated pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
16. Pursuant to 40 C.F.R. § 122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.
17. 40 C.F.R. § 122.32(a)(1) states: “(a) Unless you qualify for a waiver under paragraph (c) of this section, you are regulated if you operate a small MS4, including but not limited to systems operated by federal, State, Tribal, and local governments, including State departments of transportation; and: (1) Your small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated). . . .”
18. 40 C.F.R. § 122.34(a) provides: “General requirements. For any permit issued to a regulated small MS4, the NPDES permitting authority must include permit terms and conditions to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. Terms and conditions that satisfy the requirements of this section must be expressed in clear, specific, and measurable terms. Such terms and conditions may include narrative, numeric, or other types of requirements (e.g., implementation of specific tasks or best management practices (BMPs), BMP design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and frequency of actions).”
19. Pursuant to its authority under the CWA and the NPDES program approval, WVDEP approved coverage to Respondent under General NPDES Water Pollution Control Permit – NPDES Permit No. WV0116025 effective August 11, 2014 (“MS4 Permit”). Coverage was set to expire on August 11, 2019. WVDEP administratively extended Respondent’s coverage under the MS4 Permit until WVDEP issues the new General Permit.

III. GENERAL PROVISIONS

20. For the purpose of this proceeding only, Respondent admits each jurisdictional allegation set forth in this AOC.
21. Except as provided in Paragraph 3, 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.

22. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution or enforcement of this AOC.
23. 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.
24. 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.
25. 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.
26. This AOC does not constitute a waiver or modification of the terms or conditions of any permit issued to Respondent. Nothing in this AOC shall relieve 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 AOC 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.
27. 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.
28. 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.
29. 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.
30. 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.

31. 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.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

32. Respondent is a “municipality” within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4).
33. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
34. At all times relevant herein, upon information and belief, Respondent has owned or operated, and continues to own and operate, a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) that discharges to waters of the United States.
35. At all times relevant herein, upon information and belief, Respondent owned or operated, and continues to own or operate, a “municipal separate storm sewer system” or “MS4”, as that term is defined at 40 C.F.R. § 122.26(b)(8)(i), located in the City of Martinsburg, Berkeley County, West Virginia.
36. At all times relevant to this AOC, the Respondent has discharged stormwater from the small MS4 to the Tuscarora Creek and Dry Run Creek, which subsequently flows to Opequon Creek, a tributary of the Potomac River.
37. The Potomac River, Opequon Creek, Tuscarora Creek, and Dry Run Creek are “water[s] of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
38. On February 12-13, 2020, representatives of EPA Region III, WVDEP and EPA contractors from Eastern Research Group Inc. (collectively “Audit Team”), conducted an inspection and audit of the small MS4 (hereinafter, “the Audit”) to assess compliance with the MS4 Permit.
39. Following the Audit, the Audit Team prepared an Audit Report, dated March 31, 2020, which included multiple observations regarding Respondent’s compliance with the requirements of the MS4 Permit. EPA sent a copy of the Inspection Report to the

Respondents on April 4, 2020. Respondent sent a response to the Inspection Report, dated April 29, 2020.

40. On December 7, 2020, EPA sent a Notice of Potential Violations and Opportunity to Confer letter (“NOPVOC”) to the Respondent, communicating alleged violations of the CWA and the MS4 Permit observed during the Audit.
41. EPA received the Respondent’s response to the Opportunity to Confer letter on January 12, 2020. This response included procedural documents, enforcement practices, record keeping practices, mapping, and training updated in 2020. Respondent also referenced developing and/or implementing corrective actions and new procedures to address the alleged violations communicated in the December 7, 2020 NOPVOC. Respondent also provided EPA a copy of its MS4 2020 Annual Report on January 28, 2021. The documents were considered in the development of this AOC.

Count I

Minimum Control Measure (“MCM”) 3 - Illicit Discharge Detection and Elimination

42. Part II.C.7.c. of Respondent’s MS4 Permit sets forth a number of Minimum Control Measure (“MCM”) 3 requirements, relating to Illicit Discharge Detection and Elimination (“IDDE”).
 - a. Permit Part II.C.7.c.5. (IDDE) states, “the SWMP shall contain a response procedure for spills into the storm sewer system not under the purview of another responding authority.”
 - b. Permit Part II.C.7.c.6. (IDDE) requires, “For new permittees, development of a map of the storm sewer system by the end of the first year after SWMP approval shall be a measurable, enforceable goal for Illicit Discharge Detection and Elimination. Thereafter, storm sewer system maps shall be updated on an annual basis and shall include:
 - (a) The location of all known storm sewer outfalls,
 - (b) Known connections authorized since map was last updated,
 - (c) Receiving waters,
 - (d) Structural stormwater BMPs owned, operated or maintained by the permittee,
 - (e) The location and type of all other stormwater conveyances located within the boundaries of the MS4 watershed, and
 - (f) Geographic areas outside the permittee's jurisdiction that discharge stormwater into the MS4.
 - (g) The permittee may opt to include land use on the map.”
 - c. Permit Part II.C.7.c.18. (IDDE) states, “The permittee shall document:
 - (a) Locations of priority areas likely to have illicit discharges,
 - (b) Evaluation of land uses associated with business/industrial activities,
 - (i) The permittee shall develop an inventory of these priority areas.

- (ii) The inventory will include a listing of all facilities with aboveground storage tanks that are not covered by an NPDES permit.”
 - d. Permit Part II.C.7.c.20. (IDDE) states, “Field assessment activities are to include:
 - (b) Dry weather screening.”
 - e. Permit Part II.C.7.c.21. (IDDE) states, “For field assessments, the measurable, enforceable goal for existing permittees shall be to correlate assessment results with impaired waters/TMDL conditions and to document the correlation in the final annual report.
 - (a) To demonstrate success with this goal, existing permittees may report assessment activities conducted in 303d/TMDL areas of the contributing sewershed, or
 - (b) Existing permittees may report assessment activities related to 303d/TMDL pollutants of concern.”
 - f. Permit Part II.C.7.c.29. (IDDE) states, “The SWMP will describe the permittee's recording keeping [sic] system for IDDE calls received and follow-up actions taken to eliminate pollution.”
 - g. Permit Part II.C.7.c.30. (IDDE) states, “Permittees shall provide annual training to all municipal field staff who are responsible for identification, investigation, termination, cleanup, and reporting of illicit discharges, including spills, improper disposal and illicit connections.”
43. At the time of the Audit, Respondent had not fully implemented MCM 3 requirements pertaining to IDDE, including:
- a. Respondent provided IDDE procedures for spill response developed in 2017 and updated in 2020, contained outside of the Stormwater Management Plan (“SWMP”), which focuses on record keeping. It does not contain procedures for field response, such as ways to identify and address the source of spills, contain and clean up spills, or dispose of materials contaminated by spills.
 - b. The storm sewer system map did not meet all MS4 Permit requirements and was not fully up to date. Specifically, the Respondent had not accurately mapped all MS4 outfalls, nor had it mapped all conveyances within the MS4 or geographic areas outside the MS4 that discharge stormwater into the MS4 (including connections with adjacent MS4s). A majority of the mapped outfalls were not actually MS4 outfalls, but instead, mapped points depicted as outfalls on the storm sewer map often represented end of pipe locations that discharged into other conveyances (e.g., ditches and road crossings, fields, etc.).
 - c. An inventory of priority areas likely to have illicit discharges was not developed. An inventory listing of all facilities with aboveground storage tanks that are not covered by an NPDES permit was not developed.

- d. Dry weather screening was being conducted, but it was not conducted each month as required by the MS4 Permit.
 - e. Field assessments had not been correlated with impaired waters/Total Maximum Daily Load (“TMDL”) conditions and documented in the final annual report.
 - f. The SWMP did not describe the Respondent’s recording keeping system for IDDE calls received and follow-up actions taken to eliminate pollution. Due to the lack of a centralized location for IDDE call tracking, the EPA Audit Team was unable to determine if all IDDE-related complaints received by the City were being appropriately addressed.
 - g. The Respondent did not provide annual training in 2019 to all municipal field staff who are responsible for identification, investigation, termination, cleanup, and reporting of illicit discharges, including spills, improper disposal, and illicit connections.
44. Based on the above assertions and allegations, EPA concludes that Respondent violated MCM 3 requirements in Part II.C.7.c. of its MS4 Permit, pertaining to IDDE, from at least from at least March 1, 2016 to at least February 13, 2020.

Count II

MCM 5 - Controlling Runoff from New Development and Redevelopment

45. Part II.C.7.e. of Respondent’s MS4 Permit sets forth MCM 5 requirements relating to Controlling Runoff from New Development and Redevelopment.
- a. Permit Part II.C.7.e.16.r. (Controlling Runoff from New Development and Redevelopment) states, “The permittee shall utilize a system to track stormwater management practices at new development and redevelopment projects.
 - (i) Tracking of stormwater management practices shall begin during the plan review and approval process with a database or geographic information system (GIS), or other approved system.
 - (ii) The database or tracking system shall include information on both public and private sector projects that are within the permittee's jurisdiction.
 - (iii) In addition to the standard information collected for all projects (such as project name, owner, location, start/end date, etc.), the tracking system shall also include:
 - (1) Source control stormwater management practices (type, number, design or performance specifications)
 - (2) Treatment control stormwater management practices (type, number, design or performance specifications)
 - (3) Latitude and longitude coordinates of stormwater BMP controls using a global positioning system
 - (4) Digital photographs of stormwater management practice controls
 - (5) Maintenance requirements of stormwater management practices (frequency of required maintenance and inspections)

(6) Inspection information (date, findings, follow up activities, compliance status) . . .”

- b. Permit Part II.C.7.e.16.t. (Controlling Runoff from New Development and Redevelopment) states, “The permittee shall develop an enforcement and response plan to ensure stormwater BMPs are properly maintained, to include:
 - (i) Prompt notification to the stormwater BMP owner or operator of any deficiencies discovered during a maintenance inspection.
 - (ii) Compliance with the enforcement response plan to ensure that management practices are maintained.
 - (iii) Subsequent inspection procedures/policies to ensure completion of all required repairs.
 - (iv) Procedures to enforce correction orders and a contingency plan if correction orders are not followed through by the responsible party.”
- c. Permit Part II.C.7.e.16.u. (Controlling Runoff from New Development and Redevelopment) states, “The permittee shall demonstrate compliance with the requirements for post construction controls by summarizing the following in the Annual Report:
 - (v) A summary of stormwater BMP maintenance inspections conducted by the permittee, including a summary of the number requiring maintenance or repair, the number brought into compliance and the number of enforcement actions taken.”
- d. Permit Part II.C.7.e.14. (Controlling Runoff from New Development and Redevelopment) states, “Existing permittees shall continue to implement, assess, and enforce site and neighborhood design elements in accordance with the approved SWMP schedule.”
 - (i) The permittee is to develop an inspection calendar for all stormwater BMPs to be inspected at least once during the permit cycle.”

Permit Part II.C.7.e.16.s. (Controlling Runoff from New Development and Redevelopment) states, “The permittee shall inspect Stormwater BMPs to determine proper operation and maintenance on the part of the owner/operator.

SWMP Part II.C.b.5.19.k.A (Controlling Runoff from New Development and Redevelopment- MCM Components) identifies the following implementation schedule:

“Implementation Schedule:

1. Will develop process to document the date and location of BMP's throughout City.
2. Complete post construction site inspection forms for inspections.
3. Document comments received from the public regarding post construction site concerns.
4. Document all issued Notice of Violations who have failed to comply with maintenance agreements.”

46. At the time of the Audit, Respondent had not fully implemented MCM 5 requirements pertaining to Controlling Runoff from New Development and Redevelopment, including:
- a. The tracking system for stormwater BMPs did not include all information. Stormwater BMPs were not accurately designated as public or private. Additionally, required inspection information and maintenance requirements were not included in the tracking system. The EPA Audit Team observed that some but not all stormwater BMPs had digital photographs on file.
 - b. Respondent was not fully implementing an inspection program for post-construction stormwater BMPs that were not owned by the Respondent. Respondent had not developed a formal enforcement response plan for controlling runoff from new development and redevelopment, including conducting inspections, enforcing maintenance agreements, and recouping costs.
 - c. The 2019 annual report did not include a summary of post-construction stormwater BMPs requiring maintenance and did not indicate if enforcement had occurred in the previous year.
 - d. Respondent has not been conducting inspections of private post-construction stormwater BMPs on a regular basis or recurring schedule. Inspections that had occurred at private postconstruction stormwater BMPs were the result of public complaints regarding flooding or needed maintenance.
47. Based on the above assertions and allegations, EPA concludes that Respondent violated MCM 5 requirements in Part II.C.7.e. of its MS4 Permit, relating to Controlling Runoff from New Development and Redevelopment, from at least March 1, 2016 to at least February 13, 2020.

Count III

MCM 6 - Pollution Prevention & Good Housekeeping for Municipal Operations

48. Part II.C.7.f. of Respondent's MS4 Permit sets forth MCM 6 requirements pertaining to Pollution Prevention & Good Housekeeping for Municipal Operations.
- a. Permit Part II.C.7.f.10. (Pollution Prevention & Good Housekeeping for Municipal Operations) states, "For employees whose construction, operations, or maintenance job functions may impact water quality, the training program shall address:
 - (a) The importance of protecting water quality,
 - (b) The requirements of this general permit,
 - (c) Operation and maintenance standards,
 - (d) Inspection procedures,
 - (e) Selecting appropriate BMPs,
 - (f) Proper task procedures for preventing or minimizing impacts to water quality,
 - (g) Procedures for reporting water quality concerns such as potential illicit discharges,

- (h) Follow-up and refresher training shall be provided at a minimum of once every twelve months and,
- (i) Shall include any changes in procedures, techniques or requirements.”

- b. Permit Part II.C.7.f.16. (Pollution Prevention & Good Housekeeping for Municipal Operations) states, “The SWMP shall contain a benchmark monitoring plan for stormwater discharged from facilities or locations of municipal industrial activities.”
- c. Permit Part II.C.7.f.16.c. (Pollution Prevention & Good Housekeeping for Municipal Operations) states, “Levels above the benchmark shall trigger a review of the SWMP by the permittee to determine if alternative, more effective BMPs can be implemented. Reviews must be conducted within 30 days of the permittee's receipt of the laboratory or field results of stormwater analysis.”
- d. Permit Part II.C.7.f.16.d. (Pollution Prevention & Good Housekeeping for Municipal Operations) states, “The following parameters should be considered and incorporated as appropriate for municipal industrial activities:

<u>Parameter</u>	<u>Cut-off Concentration</u>	<u>Measurement</u>
BOD-5	30 mg/l	Once/Six months
COD	120 mg/l	Once/Six months
TSS	100 mg/l	Once/Six months
Ammonia/Nitrogen	4 mg/l	Once/Six months
Oil & Grease	15 mg/l	Once/Six months
pH	6.0-9.00 s.u.	Once/Six months”

- 49. At the time of the Audit, Respondent had not fully implemented MCM 6 requirements pertaining to Pollution Prevention & Good Housekeeping for Municipal Operations, including:
 - a. Respondent had conducted training for staff with construction operation and maintenance jobs most recently on November 30, 2018. Respondent failed to provide follow-up and refresher training at a minimum of once every twelve months, as required by the Permit.
 - b. A benchmark monitoring plan was not included in the SWMP as required by the Permit. However, annual benchmark monitoring was being conducted by the City.
 - c. The Permittee had not reviewed and revised its SWMP in response to benchmark exceedances. The EPA Audit Team also observed that sampling locations may not be representative of the stormwater discharges.
 - d. Benchmark sampling reports were reviewed from 2016, 2018, and 2019. No benchmark sampling results were provided for 2017. The EPA Audit Team observed benchmark monitoring was being conducted once per year instead of every six months, as required by the Permit.

50. Based on the above assertions and allegations, EPA concludes that Respondent violated MCM 6 requirements in Part II.C.7.f. of its MS4 Permit, pertaining to Pollution Prevention & Good Housekeeping for Municipal Operations, from at least March 1, 2016 to at least February 13, 2020.

Count IV

Schedule for Monitoring and Reporting of Discharge Monitoring Reports

51. Permit Part IV.A.1.i (Stormwater Monitoring) of Respondent's MS4 Permit states, "Registrations issued/reissued on the first through the fifteenth of a month will use the issued month to determine the semi-annual reporting date. . . . Registrations issued after the fifteenth of each month will use the next month after the issued month to determine the reporting start date."
52. At the time of the Audit, Respondent failed to follow the appropriate schedule for monitoring and reporting of Discharge Monitoring Reports required by the MS4 Permit. From the time period of October 1, 2017 to October 31, 2019, effluent discharge data for Outlets 001, 002, and 003 was flagged in EPA's national database as late on five separate submissions.
53. Based on the above assertions and allegations, EPA concludes that Respondent violated Part IV.A.1.i of its MS4 Permit, pertaining to Stormwater Monitoring, from at least October 1, 2017 to at least October 31, 2019 on five occasions.
54. Based on the above assertions and allegations in Paragraphs 1 through 53, above, Respondent failed to comply with the terms and conditions of the MS4 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:

55. Within sixty (60) days of the Effective Date of this 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 completion of each of the following:
- a. Implementation of an adequately staffed and funded stormwater program to meet the MS4 program requirements, including compliance, administrative, engineering staffing, proactive maintenance, capital projects, and equipment. The plan should include an annual self-assessment of efforts at implementation. The schedule to implement an adequately staffed and funded stormwater program shall not exceed three (3) years from the Effective Date of this AOC.
 - b. Assessment of the current monitoring locations and sampling methods of municipal industrial activities to ensure results are representative. If the current monitoring locations or sampling methods are not representative, provide

- recommendations for new monitoring locations or methods. For each recommendation, provide training to the Martinsburg staff conducting sampling on any new sampling procedures to meet the requirements of its Permit. Assessment, recommendations, and training should be prepared by person(s) qualified in stormwater management, such as a licensed engineer or environmental professional. As part of the CAP deliverables, the Respondent shall submit the assessment report, a map of the monitoring locations, training records, and photographs of each sampling location and identifying signage.
- c. Identification of priority areas likely to have illicit discharges including an evaluation of land uses associated with business/industrial activities.
 - d. An inventory of all facilities with aboveground storage tanks that are not covered by an NPDES permit.
 - i. The Respondent's first annual report after identifying the locations with above ground tank will include the number of tanks, contents, and address.
 - ii. Subsequent annual reports do not need to include previously reported above ground tanks unless the Respondent learns of changes at the facility such as tank demolition, construction, a new business type or owner, or a change of tank content.
 - e. An inventory of digital photographs of all stormwater management practice controls.
 - f. A strategy to regularly evaluate Permit required inventories and ensure they are up to date.
 - g. MS4 mapping requirements. Thereafter, maps shall be updated on an annual basis thereafter.
56. The schedule to implement the corrective actions identified in the CAP shall not exceed eighteen (18) months from the Effective Date of this AOC, except where specified in Paragraph 55(a).
57. Within ninety (90) days of the Effective Date of the AOC, the Respondent shall develop the following procedures. The procedures shall include:
- a. IDDE spill response procedures, which contain field response activities, such as ways to identify and address the source of spills, contain and clean up spills, and dispose of materials contaminated by spills.
 - b. A standard operating procedure ("SOP"), formal enforcement procedure, and inspection calendar, for conducting required inspections, enforcing maintenance agreements for private BMPs, conducting maintenance activities or corrective actions, and recouping costs from the property owners. The inspection calendar

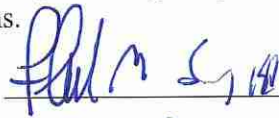
should include an inspection for all stormwater BMPs at least once every five (5) years.

58. EPA will review the CAP and procedures, and make a determination of completeness and adequacy, based on the requirements described in Paragraphs 55-57. If EPA determines that the CAP or procedures are not complete or adequate, EPA shall notify Respondent in writing and Respondent shall resubmit an updated CAP or procedures 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 and commence implementation of the procedures.
59. Respondent shall submit a notice to EPA within thirty (30) days after all work as identified in and required by the CAP has been completed.
60. The Respondent shall provide EPA:
 - a. The SWMP as approved by WVDEP, upon Permit renewal.
 - b. A copy of each final MS4 Annual Report, when submitted to WVDEP, until this AOC is terminated.

VI. PROCEDURES FOR SUBMISSIONS

61. All documents required to be submitted by this AOC 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: City Attorney
Date: 7-30-21

62. 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.

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

Email: Pruzinsky.Amanda@epa.gov

Ms. Amanda Pruzinsky
NPDES Enforcement
Enforcement and Compliance Assurance Division
U.S. EPA, Region III

All information submitted shall be submitted in a widely recognized electronic format.

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

64. Upon completion of all Martinsburg AOC Compliance Order items required pursuant to this AOC and determination of completeness of each item required by the AOC Compliance Order section, 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.
65. 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

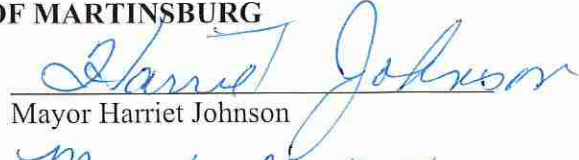
66. Any request to modify the terms of, or parties to, this AOC shall be submitted, in writing, by Respondent to EPA and shall be subject to review and approval by EPA, in its sole and unreviewable discretion. Respondent's submission of a written request for modification of this AOC shall not relieve 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. EFFECTIVE DATE

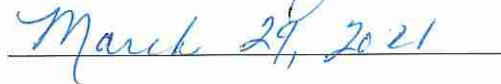
67. This AOC will become effective upon the Sewer Authority's receipt of a fully-executed copy of this AOC.

FOR CITY OF MARTINSBURG

By:


Mayor Harriet Johnson

Date:



SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: _____

By: _____

Karen Melvin

Director, Enforcement & Compliance Division

U.S. Environmental Protection Agency, Region III