



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
FOUR PENN CENTER - 1600 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PENNSYLVANIA 19103-2852

In the Matter of:

Moorefield/Hardy County Wastewater Authority
206 Winchester Avenue
Moorefield, WV 26836

U.S. EPA Docket No. CWA-03-2022-0097

Respondent

Moorefield Hardy County Regional Wastewater Treatment Plant
US Route 220
Moorefield, WV 26836
NPDES Discharge Permit No. WV0106038

Proceeding under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)

Facility

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Division Director of the Enforcement and Compliance Assurance Division (ECAD), U.S. Environmental Protection Agency, Region III ("Complainant") and Moorefield/Hardy County Wastewater Authority (the "Authority" or "Respondent") (collectively the "Parties"), pursuant to Section 309 of the Clean Water Act, 33 U.S.C. §§ 1319 ("CWA"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Section 309 of the CWA, 33 U.S.C. §§ 1319, authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated this authority to enter into consent agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "Consent Agreement and Final Order") resolve Complainant's civil penalty claims against Respondent under 309 of the CWA, 33 U.S.C. § 1319, for the violations alleged herein.

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

## **II. JURISDICTION**

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6) in assessing Class II penalties under Sections 309(g).

## **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), WVDEQ 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. The Authority 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 Moorefield/Hardy County Wastewater Treatment Plant (“WWTP” or “Facility”) located at US Route 220, Moorefield, WV 26836. The WWTP discharges treated domestic wastewater from the Facility into the South Branch of 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. WV0106038 (“Permit”), issued by WVDEQ on August 25, 2016, and became effective on October 1, 2016 with an expiration date of June 30, 2021 (“2016 Permit”). On May 20, 2021, WVDEQ reissued the Permit that became effective on July 1, 2021 with an expiration date of May 19, 2026 (“2021 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. The South Branch of the Potomac River is 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 South Branch of 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 15, 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 Permit defines effluent discharge limitations and monitoring requirements for Outfall 001 discharges. The Permittee reported the following twenty-three (23) effluent limit exceedances in its discharges to Outfall 001 since January 1, 2017.

Monitoring Period Date	Parameter Description	Limit Type	DMR Value	Permit Limit Value	Limit Value Unit
					mg/L
12/31/2017	Nitrogen, ammonia total (as N)	DAILY MX	5.43	4	mg/L
12/31/2017	Fecal coliform	DAILY MX	2250	400	#/100mL
1/31/2018	Nitrogen, ammonia total (as N)	DAILY MX	7.08	4	mg/L
1/31/2018	Nitrogen, ammonia total (as N)	DAILY MX	165.8	137	lbs/day
6/30/2018	Nitrogen, ammonia total (as N)	DAILY MX	192.97	137	lbs/day
6/30/2018	Nitrogen, ammonia total (as N)	DAILY MX	5.53	4	mg/L
10/31/2018	Bromodichloromethane, effluent	DAILY MX	0.00166	0.0008	mg/L
10/31/2018	Bromodichloromethane, effluent	MO AVG	0.00166	0.0006	mg/L
1/31/2019	Nitrogen, nitrite total (as N)	MO AVG	1.3	1	mg/L
2/28/2019	Bromodichloromethane, effluent	DAILY MX	0.0009	0.0008	mg/L
2/28/2019	Bromodichloromethane, effluent	MO AVG	0.0009	0.0006	mg/L
11/30/2019	Cyanide, free (amen. to chlorination)	MO AVG	0.01	0.004	mg/L
11/30/2019	Cyanide, free (amen. to chlorination)	DAILY MX	0.01	0.008	mg/L
11/30/2019	Bromodichloromethane, effluent	DAILY MX	0.00174	0.0008	mg/L
11/30/2019	Bromodichloromethane, effluent	MO AVG	0.00174	0.0006	mg/L
12/31/2019	Cyanide, free (amen. to chlorination)	DAILY MX	0.03	0.008	mg/L
12/31/2019	Cyanide, free (amen. to chlorination)	MO AVG	0.015	0.004	mg/L
5/31/2021	Fecal coliform	DAILY MX	784	400	#/100mL
1/31/2022	Nitrogen, ammonia total (as N)	DAILY MX	5.4	4	mg/L
1/31/2022	Nitrogen, ammonia total (as N)	MO AVG	2.37	2	mg/L
2/28/2022	Nitrogen, ammonia total (as N)	DAILY MX	157.69	137	lb/day
2/28/2022	Nitrogen, ammonia total (as N)	MO AVG	2.25	2	mg/L
2/28/2022	Nitrogen, ammonia total (as N)	DAILY MX	7.1	4	mg/L

27. Based on the above allegations in Paragraph 26, above, EPA concludes that Respondent violated Part A of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a) on at least the dates set above.

**CIVIL PENALTY**

28. 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 Thirty-Thousand dollars (\$30,000), which Respondent shall be liable to pay in accordance with the terms set forth below.

29. 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 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.

30. 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-03-2022-0097*;

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](mailto:Ramalho.Louis@epa.gov)

and

U.S. EPA Region III Regional Hearing Clerk  
R3\_Hearing\_Clerk@epa.gov.

31. 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.

32. 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).

33. 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).

34. 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). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will 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.

35. 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).

36. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

37. 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 lucas.gagnon@townofmoorefield.com (for Respondent).

**V. GENERAL SETTLEMENT CONDITIONS**

38. 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.

39. 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**

40. 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**

41. 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**

42. 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**

43. 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**

44. 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**

45. 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:

Moorefield/Hardy County Wastewater Authority

By:



Lucas Gagnon, President  
Moorefield/Hardy County Wastewater Authority  
206 Winchester Avenue  
Moorefield, WV 26836

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



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: Proceeding under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)

Facility

FINAL ORDER

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

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of the statutory factors set forth in Section 309(g)(3).

NOW, THEREFORE, PURSUANT TO Section 309(g) of the Clean Water Act, 33 U.S.C. Section 1319(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, IT IS HEREBY ORDERED that Respondent pay a civil penalty in the amount of Thirty Thousand Dollars (\$30,000) 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



Copies served via email to:

Louis F. Ramalho  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
[Ramalho.Louis@epa.gov](mailto:Ramalho.Louis@epa.gov)

Mark Zolandz  
NPDES Section, Water Branch, Enforcement and Compliance Assurance Division  
U.S. EPA, Region III  
[Zolandz.Mark@epa.gov](mailto:Zolandz.Mark@epa.gov)

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*[Digital Signature and Date]*  
Louis F. Ramalho  
Sr. Assistant Regional Counsel  
U.S. EPA, Region III