UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	**U.S. EPA Docket No.**
City of Martinsburg, WV	:	**CAA-EPCRA-CERCLA-03-2022-0065**
232 North Queen Street	:	
Martinsburg, WV 25401,	:	**Proceeding under:**
	:	
Respondent.	:	**Sections 112(r) and 113 of the Clean Air Act,**
	:	**42 U.S.C. §§ 7412(r) and 7413;**
City of Martinsburg, WV	:	
Wastewater Treatment Plant	:	**Sections 103 and 109 of the Comprehensive**
500 East John Street	:	**Environmental Response, Compensation and**
Martinsburg, WV 25401,	:	**Liability Act, 42 U.S.C. §§ 9603 and 9609; and**
	:	
Facility.	:	**Sections 304 and 325 of the Emergency**
	:	**Planning and Community Right-to-Know Act,**
	:	**42 U.S.C. §§ 11004 and 11045**

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III ("Complainant") and the City of Martinsburg, West Virginia ("Respondent") (collectively the "Parties"), pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d); Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609; Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045; 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 113(d) of the CAA authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. Section 109 of CERCLA vests the President of the United States with the authority to assess penalties and undertake other actions required by this Consent Agreement, which authority has been delegated to the Administrator of the U.S. Environmental Protection Agency ("EPA"). Section 325 of EPCRA 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 the authority to enter into 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 the CAA, CERCLA, and EPCRA 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.

JURISDICTION

3. The U.S. Environmental Protection Agency 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)(2), (a)(7), and (a)(8).

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 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the Administrator and the Attorney General, each through their respective delegates, have jointly determined that this administrative penalty action is appropriate.

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. Respondent is a city in Berkeley County, West Virginia with its offices located at 232 North Queen Street, Martinsburg, West Virginia 25401.

14. As a municipality, Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e); by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. § 302.3; as well as Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 355.61, and is subject to the assessment of civil penalties for the violations alleged herein.

15. Respondent is, and at all times relevant to this Consent Agreement and Final Order was, the owner and operator of the wastewater treatment facility located at 500 East John Street, Martinsburg, West Virginia 25401 (the "Facility").

16. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9); Section 329(4) of EPCRA, 42 U.S.C. § 11049(4); and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.

17. Respondent is, and at all times relevant to this Consent Agreement and Final Order was, the "owner and operator" of the Facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and as referenced in Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. §§ 355.2.

18. Respondent is, and at all times relevant to this Consent Agreement and Final Order was, in charge of the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

19. At all times relevant to this Consent Agreement and Final Order, Respondent produced, used, or stored hazardous chemicals at the Facility, namely, ferric chloride and sodium hypochlorite.

20. On the morning of December 23, 2019, Respondent released approximately 2,000 pounds of chlorine gas from the Facility into the atmosphere after ferric chloride was inadvertently added to a storage tank containing sodium hypochlorite ("the Release").

21. On January 13, 2020, EPA conducted an inspection of the Facility (the "Inspection"), pursuant to Section 114 of the Clean Air Act ("CAA"), 42 U.S.C. § 7414, to determine the City's compliance with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), also known as the General Duty Clause.

Count I
Failure to Design and Maintain a Safe Facility

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

23. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Clean Air Act Amendments added Section 112(r) to the CAA, 42 U.S.C. § 7412(r).

24. Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), requires that the owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, a general duty, in the same manner and to the same extent as 29 U.S.C. § 654, to identify hazards which may result from the release of such substances using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

25. The General Duty Clause applies to any stationary source producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the CAA, or other extremely hazardous substances.

26. The Facility is a "stationary source" as defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R.§ 68.3.

27. At the time of the Inspection, EPA observed that the Facility handled and stored various substances in large storage tanks including, but not limited to, two 7,700-gallon storage tanks of ferric chloride 35% and one 6,000-gallon storage tank of sodium hypochlorite 12.5%.

28. Ferric chloride, Chemical Abstract Service ("CAS") No. 7705-08-0, is an extremely hazardous substance due to its toxic, corrosive, and irritative effects as detailed in its safety data sheet ("SDS"). The SDS for ferric chloride states that it is acutely toxic if swallowed, causes severe skin burns and serious eye damage, may be corrosive to metals, and its reaction with some metals may evolve flammable hydrogen gas.

29. Sodium hypochlorite, CAS No. 7681-52-9, is an extremely hazardous substance due to its corrosive, toxicological, and irritative effects as detailed in its SDS. The SDS for sodium hypochlorite states that it causes severe skin burns and eye damage, is very toxic to aquatic life with long lasting effects, its acutely toxic if ingested, and may be harmful to inhale and corrosive to metals.

30. The mixing of ferric chloride and sodium hypochlorite at the Facility on December 23, 2019 caused a chemical reaction and the subsequent production and release of approximately 2,000 pounds of chlorine gas into the atmosphere.

31. Chlorine, CAS No. 7782-50-5, is an extremely hazardous substance regulated and listed in CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), and 40 C.F.R. § 68.130.

32. As the owner and operator of a stationary source, with respect to the use and storage of ferric chloride and sodium hypochlorite, Respondent has a duty under the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to design and maintain a safe facility taking such steps as are necessary to prevent the accidental release of substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or of any other extremely hazardous substances.

33. Relevant industry standards for the storage, handling, and use of sodium hypochlorite and ferric chloride include: Chlorine Institute Pamphlet 96 ("CI Pamphlet 96"), "Sodium Hypochlorite Manual," 4th Edition (October 2011) and 5th Edition (September 2017); Chlorine Institute Pamphlet 65 ("CI Pamphlet 65"), "Personal Protective Equipment for Chlor-Alkali Chemicals," 5th Edition (February 2008) and 6th Edition (July 2016); and the SDSs for sodium hypochlorite and ferric chloride.

34. CI Pamphlet 96, 4th and 5th editions, details the necessity to train employees regarding the incompatibility of chemicals and the hazards of accidentally mixing sodium hypochlorite with incompatible chemicals in order to provide safety consistent with industry standards.

   a. Section 7.3.1 of CI Pamphlet 96 (2011) states that employers who handle hazardous materials, such as sodium hypochlorite, should develop a company policy and training programs for its employees to educate these employees to the possible hazards of the workplace and to assist them in their understanding of the requirements, responsibilities, safety measures, and procedures that must be followed at the work site. *See* CI Pamphlet 96 (2011) § 7.3.1; *see also* CI Pamphlet 96 (5th ed., 2017) at § 5.3.1.

   b. Section 8.16.1 of CI Pamphlet 96 (2011) continues, "Unloading operations must be performed by reliable, properly instructed persons. An inspection checklist should be used for all aspects of the unloading operation." *See* CI Pamphlet 96 (2011) at § 8.16.1. CI Pamphlet 96, Appendix D "Accidental Mixing Guidance: Avoiding Accidental Mixing of Sodium Hypochlorite" provides an enumerated checklist of recommendations to avoid accidental mixing during bulk unloading of sodium hypochlorite.

35. CI Pamphlet 96, 4th and 5th editions, and CI Pamphlet 65 detail the necessity to train employees regarding the use of personal protective equipment ("PPE") in order to provide safety consistent with industry standards.

   a. Section 7.9 of CI Pamphlet 96 (2011) states that companies must perform a hazard assessment on each operation to determine what PPE will be needed for that operation, but that PPE must be worn when handling sodium hypochlorite.

See CI Pamphlet 96 (2011) § 7.9; *see also* CI Pamphlet 65, "Personal Protective Equipment for Chlor-Alkali Chemicals," (2008) at Table 7.1.

b. Section 8.16.1 of CI Pamphlet 96 (2011) also indicates that a central component of operational safety while unloading sodium hypochlorite is the PPE of unloading personnel: "Proper personal protective equipment (which may include hard hat, chemical splash goggles, full face shields, chemical protective suit, gloves, and boots) should be worn during the transfer operations." *See* CI Pamphlet 96 (2011) at § 8.16.1.

c. The SDS for sodium hypochlorite states that sodium hypochlorite is a base and incompatible with acids, that it can cause severe skin burns and eye damage, and recommends that PPE be worn for safe handling to avoid tasting, swallowing, or getting any of the chemical substance on clothes, skin or eyes.

d. The SDS for ferric chloride states that it is an acid and incompatible with bases and their interaction can cause exothermic reactions. The SDS further states that ferric chloride can cause skin irritation and serious eye damage, and recommends that PPE (i.e., tightly fitting googles and face shield, protective gloves, clothing, and boots, and a half mask with filter if aerosol or mist formed) be used for safe handling.

36. During EPA's Inspection, Respondent's employee, who was responsible for overseeing the unloading of products from delivery trucks into the associated tanks at the Facility, stated that Respondent had not provided him with training on the incompatibility of chemicals and/or avoiding accidental mixing of sodium hypochlorite with other chemicals, or the proper use of PPE.

37. Respondent is subject to the requirements of the General Duty Clause at the Facility because Respondent is the owner and operator of a stationary source which produces, processes, handles, or stores hazardous substances listed pursuant to Section 112(r)(3) of the CAA, or other extremely hazardous substances.

38. At the time of the Inspection, Respondent failed to comply with the requirement of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to design and maintain a safe facility taking such steps as are necessary to prevent accidental releases by failing to adhere to relevant industry standards and provide training to Facility employees on the incompatibility of chemicals and/or avoiding accidental mixing of sodium hypochlorite with other chemicals, and the proper use of PPE.

39. Respondent violated the requirements of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), to design and maintain a safe facility taking such steps as are necessary to prevent the release of substances listed pursuant to Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substances by failing to provide its employees at the Facility proper training on (1) incompatibility of chemicals and

avoiding accidental mixing of sodium hypochlorite with other chemicals, and (2) the proper use of PPE as provided by industry standards.

40. In failing to comply with Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), Respondent is subject to the assessment of penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

Count II
Failure to Immediately Notify the National Response Center of a Release

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

42. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility, as soon as he has knowledge of a release of a hazardous substance from such facility, in a quantity equal to or greater than the reportable quantity (“RQ”) for that hazardous substance, to immediately notify the National Response Center (“NRC”) of the release.

43. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of the EPA to publish a list of substances designated as hazardous substances, which, when released into the environment may present substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). The list of hazardous substances is codified at 40 C.F.R. § 302.4.

44. Chlorine is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 10 pounds, as listed in 40 C.F.R. § 302.4.

45. The December 23, 2019 release of approximately 2,000 pounds of chlorine from the Facility (“the Release”) constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

46. The Release was not a “federally permitted release” as that term is defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10), and as used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a); and 40 C.F.R. § 302.6.

47. Respondent should have had knowledge of a release of chlorine from the Facility in quantities exceeding the RQ at approximately 6:00 a.m. on December 23, 2019, when an employee reported smelling a strong chlorine odor and knew that ferric chloride had been loaded into the sodium hypochlorite tank.

48. Respondent did not notify the NRC of the Release.

49. Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603, by failing to immediately notify the NRC of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6.

50. In failing to comply with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. Part 302, Respondent is subject to the assessment of penalties under Section 109(a) of CERCLA, 42 U.S.C. § 9609(a).

Count III
Failure to Immediately Notify the State Emergency Response Commission of a Release

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

52. Chlorine is an extremely hazardous substance, as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61, with an RQ of 10 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B.

53. The State Emergency Response Commission ("SERC") for the Facility is, and at all times relevant to this Consent Agreement and Final Order has been, the West Virginia Division of Homeland Security and Emergency Management, located at 2403 Fairlawn Avenue, Dunbar, West Virginia 25064.

54. Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored to notify the SERC immediately following the release of an extremely hazardous substance for which notification is also required under CERCLA Section 103, 42 U.S.C. § 9603.

55. The Release from the Facility constituted a release of an extremely hazardous substance in a quantity equal to or exceeding the RQ for that extremely hazardous substance, requiring immediate notification under CERCLA Section 103, 42 U.S.C. § 9603, and therefore, required immediate notification of the SERC pursuant to Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b).

56. The Release was not a "federally permitted release" as that term is defined in Section 304(a)(2)(A) of EPCRA, 42 U.S.C. § 11004(a)(2)(A), and 40 C.F.R. § 355.31(b).

57. Respondent did not notify the SERC of the Release.

58. Respondent violated Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), by failing to immediately notify the SERC, West Virginia Division of Homeland Security and Emergency Management, as soon as Respondent knew or should have

known that a release of an extremely hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ.

59. In failing to comply with Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), and 40 C.F.R. Part 355, Subpart C, Respondent is subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

CIVIL PENALTY

60. 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 SIXTY-SIX THOUSAND dollars ($66,000), which Respondent shall be liable to pay in accordance with the terms set forth below. The total penalty amount consists of FIFTEEN THOUSAND AND FIVE HUNDRED dollars ($15,500) for a violation of Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1) ("CAA civil penalty"), TWENTY-FIVE THOUSAND AND TWO HUNDRED FIFTY dollars ($25,250) for a violation of Section 103 of CERCLA, 42 U.S.C. § 9603 ("CERCLA civil penalty"), and TWENTY-FIVE THOUSAND AND TWO HUNDRED FIFTY dollars ($25,250) for a violation of Section 304(a)(1), and (b) of EPCRA, 42 U.S.C. § 11004(a)(1), and (b) ("EPCRA civil penalty").

61. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), Section 325(b)(1)(C) of EPCRA, 42 U.S.C. §11045(b)(1)(C), and Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3). These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012), and EPA's *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999), 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.

62. 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, *i.e*., CAA-EPCRA-CERCLA-03-2022-0065;

    b. CERCLA Civil Penalty - $25,250

        i. All checks in payment of the CERCLA civil penalty shall be made payable to the "EPA-Hazardous Substances Superfund"

ii. All payments made by check in payment of the CERCLA civil penalty and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

c. <u>EPCRA ($25,250) and CAA ($15,500) Civil Penalties - $40,750</u>

i. All checks in payment of the EPCRA and CAA civil penalties shall be made payable to the "United States Treasury"

ii. 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:

Lauren E. Ziegler
Assistant Regional Counsel
ziegler.lauren@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov

63. 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.

64. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed 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 EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

65. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date Respondent is notified of its debt to the United States as established upon the ratification and filing of the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk. 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 date on which such interest begins to accrue. 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).

66. 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, in accordance with 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.

67. 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).

68. With regards to the CAA civil penalty, if Respondent fails to make a full and complete payment of the civil penalty in accordance with this Consent Agreement and Final Order, the entire unpaid balance of the penalty shall become immediately due and owing. Failure by Respondent to pay the CAA civil penalty assessed by the Final Order in full in accordance with this Consent Agreement and Final Order may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 113 of the CAA, 42 U.S.C. § 7413. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

69. With regards to the CERCLA and EPCRA civil penalties, failure by the Respondent to pay the CERCLA civil penalty and the EPCRA civil penalty assessed by the Final Order in accordance with the terms of this Consent Agreement and Final Order may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C.

§ 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

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

71. The parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: ziegler.lauren@epa.gov (for Complainant), and ksayre@bowlesrice.com (for Respondent).

GENERAL SETTLEMENT CONDITIONS

72. 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.

73. Respondent certifies that 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 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.

CERTIFICATION OF COMPLIANCE

74. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the CAA violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

75. 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 CAA, CERCLA, or EPCRA, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

76. 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 CAA, CERCLA, and EPCRA, 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.

EXECUTION/PARTIES BOUND

77. 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.

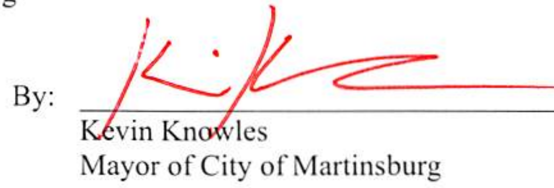
EFFECTIVE DATE

78. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

79. 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: City of Martinsburg

Date: 5/19/2022 By: 

Kevin Knowles
Mayor of City of Martinsburg

For Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & 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: ______________________________

[Signature and Date]
Karen Melvin, Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

By: ______________________________

[Signature and Date]
Lauren E. Ziegler
Assistant Regional Counsel
U.S. EPA – Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
City of Martinsburg, WV	:	**U.S. EPA Docket No.**
232 North Queen Street	:	**CAA-EPCRA-CERCLA-03-2022-0065**
Martinsburg, WV 25401,	:	
	:	**Proceeding under:**
Respondent.	:	
	:	**Sections 112(r) and 113 of the Clean Air Act,**
City of Martinsburg, WV	:	**42 U.S.C. §§ 7412(r) and 7413; and**
Wastewater Treatment Plant	:	
500 East John Street	:	**Sections 103 and 109 of the Comprehensive**
Martinsburg, WV 25401,	:	**Environmental Response, Compensation and**
	:	**Liability Act, 42 U.S.C. §§ 9603 and 9609;**
Facility.	:	**and**
	:	
	:	**Sections 304 and 325 of the Emergency**
	:	**Planning and Community Right-to-Know**
	:	**Act, 42 U.S.C. §§ 11004 and 11045**
	:	

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, the City of Martinsburg, West Virginia 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. Section 22.13(b), and Sections 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, *inter alia,* EPA's *Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7) and 40 C.F.R. Part 68* (June 2012) and EPA's *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999), and the statutory factors set forth in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e), Section 325(b)(1)(C) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11045(b)(1)(C), and Section 109(a)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9609(a)(3).

NOW, THEREFORE, PURSUANT TO Section 113(d) of the Clean Air Act, 42 U.S.C. Section 7413(d), Section 325(b)(1) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11045(b)(1), Section 109(a)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9609(a)(1), 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 ***SIXTY-SIX THOUSAND ($66,000.00),*** 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 Air Act, the Emergency Planning and Community Right-to-Know Act, or the Comprehensive Environmental Response, Compensation, and Liability Act, and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

By: ______________________________

[Signature and Date]
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III