CHESAPEAKE
LEGAL ALLIANCE

October 5, 2021

Via Certified Mail – Return Receipt Requested

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Re: Notice of Intent to File Citizen Suit for Violations of the Clean Water Act at Patapsco Wastewater Treatment Plant (NPDES Permit MD0021601) and Back River Wastewater Treatment Plant (NPDES Permit MD0021555)

To the Individuals and Entities Addressed Above:

Chesapeake Legal Alliance writes on behalf of Blue Water Baltimore (hereafter "Claimant"), pursuant to Section 505 of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. § 1365, 40 C.F.R. Part 135, in regard to violations of the CWA, 33 U.S.C. § 1251 *et seq.* for violations at the Patapsco Wastewater Treatment Plant and the Back River Wastewater Treatment Plant ("Facilities," "Permittees," or "Sites"). The Patapsco Wastewater Treatment Plant is located at 3501 Asiatic Ave, Baltimore, MD 21226, and discharges into the Patapsco River, which drains to the Chesapeake Bay. The Back River Wastewater Treatment Plant is located at 8201 Eastern Ave, Baltimore, MD 21224, and discharges into the Back River, which also drains into the Chesapeake Bay. Both Facilities are operated by the Baltimore City Department of Public Works.

The purpose of this letter is to notify the owner and operator of the Facilities, namely the City of Baltimore, of Claimant's intent to file suit regarding:

- ongoing and continuous violations of "an effluent standard or limitation" under Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A), by the Patapsco Facility's failure to comply with National Pollutant Discharge Elimination System ("NPDES") Permit No. MD0021601 (State Permit 15-DP-0580) ("Patapsco Permit") in at least the instances enumerated in this notice letter;
- ongoing and continuous violations of "an effluent standard or limitation" under Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A), by the Back River Facility's failure to comply with NPDES Permit No. MD0021555 (State Permit 15-DP-0581) ("Back River Permit") in at least the instances enumerated in this notice letter;
- failure to comply with reporting requirements and other conditions of the Permit resulting in ongoing and continuous violations of "an effluent standard or limitation" under Section 505(a)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(a)(1)(A) for both facilities.

The Sites' failure to comply with NPDES permit limits and the CWA has injured and will continue to injure or threaten to injure the environmental, aesthetic, health, and economic interests of Claimant and its members. These injuries and risks are traceable to violations at both Facilities and the correction of these ongoing violations will redress these injuries or risks. The statements herein are based on Claimant's information and belief, including, but not limited to, records obtained from the Maryland Department of the Environment ("MDE") via the Public Information Act ("PIA records"), data on U.S. Environmental Protection Agency ("EPA") Enforcement & Compliance History Online ("ECHO") database, and Claimant's own water quality monitoring data.

Citizens are entitled to bring suit against "any person…alleged to be in violation" of an "effluent standard or limitation" established under the CWA or "an order issued by…a State with respect to such a standard or limitation." 33 U.S.C. § 1365(a)(1). Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source to waters of the United States except in compliance with, among other conditions, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342(a). Moreover, as much as $56,460 can be imposed per day for each violation of the CWA, including permit limits or conditions. 33 U.S.C. § 1319(d).[1] This suit, when filed, will also address any violations that were reported for the months subsequent to the most recent month discussed below.

Pursuant to Section 505(b)(1)(A), 33 U.S.C. §1365(b)(1)(A), this letter serves to notify the City of Baltimore that Claimant intends to file a citizen suit for violations of the CWA, unless corrected, in the U.S. District Court for the District of Maryland anytime beginning 60 days after the postmarked date of this letter for the CWA violations. 40 C.F.R. §135.2(c). We would

[1] *See also* 40 C.F.R. § 19.4 (Civil Monetary Penalty Inflation Adjustment) (effective Jan. 15, 2018).

welcome an opportunity to discuss a resolution of this matter prior to the initiation of litigation if you are prepared to remedy the violations discussed herein.

I. BACKGROUND

Patapsco Wastewater Treatment Plant

The Patapsco Wastewater Treatment Plant ("Patapsco WWTP or Facility") is located at 3501 Asiatic Ave, Baltimore, MD 21226. The site treats wastewater from the Baltimore metropolitan area, including Baltimore City, Baltimore County, Anne Arundel County, and Howard County.[2] The site is permitted to discharge an average of 81.0 million gallons per day ("MGD").[3] The actual average Facility flow to date in 2021 has been 50.86 MGD.[4] The wastewater from the Patapsco facility is treated through grit removal, mechanical screens, primary clarifiers, oxygen activated sludge reactors, secondary clarifiers, a flow distribution chamber, chlorine contact chamber, and cascade post aeration chamber.[5] Currently, the Patapsco Facility operates under NPDES Permit MD0021601 and State Discharge Permit 15-DP-0580, effective October 1, 2017 to September 30, 2022, pursuant to § 402 of the CWA, 33 U.S.C. § 1342(b).[6] Wastewater effluent is discharged through outfall 001A into the Patapsco River.[7]

The Patapsco WWTP has a history of noncompliance with environmental regulations. In 2016, the Maryland Department of the Environment ("MDE") issued an administrative order for violations at the Patapsco WWTP (#CO-16-2405) that, among other things, was intended to address unauthorized discharges of fats, oils, and grease ("FOGs") at the Patapsco Facility.[8] Claimant provided documentation of FOGs in surface water at the effluent pipe to MDE from 2013-2015, which informed inspections and development of this administrative order. The federal EPA ECHO database describes the Patapsco Facility in significant noncompliance ("SNC") for 6 of the last 12 quarters (with violations identified in the other 6 quarters).[9] See section IV.A.1 below.

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[2] Maryland Department of the Environment, *Summary Report & Fact Sheet (Application No. 15-DP-0580)* 3 (2016) [hereinafter "Patapsco Fact Sheet"].
[3] Maryland Department of the Environment, *Notice of Final Determination: Application for State Discharge Permit No. 15-DP-0580, NPDES Permit MD0021601* (Aug. 2017).
[4] Environmental Protection Agency, *ECHO Pollutant Loading Report (DMR): NPDES, Permit MD0021601* https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading?permit_id=MD0021601&year=2021 (last accessed Oct. 4, 2021).
[5] Patapsco Fact Sheet, *supra* note 2, at 3.
[6] Maryland Department of the Environment, Patapsco Wastewater Treatment Plant. - NPDES Permit MD0021601 and State Discharge Permit No. 15-DP-0580 1 (Oct. 2017) [hereinafter "Patapsco Permit"].
[7] *Id.* at 1.
[8] Consent Agreement, Maryland Department of the Environment v. Mayor and City Council of Baltimore (CO-16-2405, Maryland Secretary of the Environment, June 7, 2016).
[9] Environmental Protection Agency, *ECHO Detailed Facility Report NPDES, Permit MD0021601* https://echo.epa.gov/detailed-facility-report?fid=110008423704 (last accessed Oct. 4, 2021).

Maryland Department of Environment ("MDE") recently inspected the Patapsco WWTP.[10] The inspection was prompted in part by sampling done by Claimant that indicated unusually high levels of enterococci as well as Claimants visual observations of fats, oils, and grease ("FOG") in the water surrounding the Facility's outfall.[11] Inspection of the Patapsco Facility revealed numerous violations, including significant effluent limit violations, a failure to comply with the Site's FOG mitigation plan, mishandling of samples and sampling materials, inaccurate and incomplete reporting for PCBs, failure to meet 2021 Toxic Chemical testing requirements, and a failure to submit an updated 2020 Wastewater Management Capacity Plan.[12]

The Back River Wastewater Treatment Plant

The Back River Wastewater Treatment Plant is located at 8201 Eastern Ave, Baltimore, MD 21224 and treats wastewater from Baltimore City and Baltimore County.[13] The Back River WWTP is the largest wastewater treatment plant in Maryland and is permitted to discharge an average of 180 millions of gallons per day (MGD) of treated wastewater.[14] According to EPA's ECHO database, the Back River WWTP has averaged 69.76 MGD to date in 2021.[15] The Facility uses mechanical screens, grit removal units, primary settling tanks, activated sludge plant trains, final clarifiers, sand filtration tanks, and disinfection to treat the wastewater.[16] The Back River Facility operates under NPDES Permit MD0021555 and State Discharge Permit 15-DP-0581A, effective May 1, 2018 to April 30, 2023, pursuant to § 402 of the CWA, 33 U.S.C. § 1342(b).[17] Wastewater effluent is discharged through outfall 001A into the Back River, and from outfall 002A into High Head Lake before being pumped into Bear Creek, a tributary of the Patapsco River.[18]

The Back River WWTP has intermittently failed chronic toxicity tests.[19] The federal EPA ECHO database describes the Facility as being in Category I SNC under federal criteria for pollutant exceedances in 12 of the last 12 quarters with hundreds of exceedances for numerous parameters, including some exceedances at over 400% of permit limits.[20] See Section IV.C.1 below for more

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[10] Letter from D. Lee Currey, Director, Water and Science Administration, Maryland Department of the Environment, to Yosef Kebede, Acting Head, Bureau of Water and Wastewater, Baltimore City Department of Public Works (August 23, 2021).
[11] Maryland Department of the Environment, *Inspection Report for Patapsco Wastewater Treatment Plant- May 6, 2021* 2 [hereinafter "2021 Patapsco Inspection"].
[12] Letter from D. Lee Currey, *supra* note 10, at 2-3.
[13] Maryland Department of the Environment, *Summary Report & Fact Sheet (Application No. 15-DP-0581)* 3 (2017) [hereinafter "Back River Fact Sheet"].
[14] *Id*.
[15] Environmental Protection Agency, *ECHO Pollutant Loading Report (DMR): NPDES, Permit MD0021601* https://echo.epa.gov/trends/loading-tool/reports/dmr-pollutant-loading/?permit_id=MD0021555&year=2021 (last accessed Oct. 4, 2021).
[16] *Id.* at 3.
[17] Maryland Department of the Environment, Back RiverWastewater Treatment Plant. - NPDES Permit MD0021555 and State Discharge Permit No. 15-DP-0581A 1 (May 2018) [hereinafter "Back River Permit"].
[18] *Id*.
[19] Back River Fact Sheet, *supra* note 13, at 9.
[20] Environmental Protection Agency, *ECHO Detailed Facility Report NPDES, Permit MD0021555* https://echo.epa.gov/detailed-facility-report?fid=110019889888 (last accessed Oct. 4, 2021).

details. MDE inspected the Back River WWTP on June 16, 2021 and recorded many violations, including significant effluent limit violations, failure to report violations within the time allowed, mishandling of samples and sampling materials, failure to conduct all required toxicity testing, failure to submit the results of 2021 Toxic Chemical testing, and failure to develop an updated Operations and Maintenance Manual.[21]

II. NPDES PERMIT REQUIREMENTS

Patapsco WWTP

The Patapsco Permit contains effluent limitations for the following parameters: biochemical oxygen demand (BOD), total suspended solids (TSS), total ammonia, nitrogen (as N), total phosphorus, total polychlorinated biphenyls (tPCBs), enterococci, total residual chlorine, pH, and dissolved oxygen.[22] Further, the Patapsco Permit contains monitoring requirements for the following pollutants: BOD, TSS, total ammonia nitrogen (as N), total phosphorus (as P), total nitrogen (as N), nitrite/nitrate (as N), organic nitrogen (as N), orthophosphate (as P), enterococci, total residual chlorine, dissolved oxygen, pH, copper, free cyanide, and tPCBs.[23] The effluent limitations and monitoring requirements in the Back River Permit were based on an annual average flow of 81.0 million gallons per day from outfalls 001A.[24]

The Patapsco Permit contains a number of special conditions. Under the permit, several reports are required to be submitted, including: Effluent Biomonitoring Study Plan and Toxic Chemical Testing Plan; Effluent Biomonitoring Study Report (including definitive annual chronic testing); Effluent Toxic Chemical Testing Report; Wastewater Capacity Management Plan; Flow Capacity Report (annual).[25] All toxic chemical monitoring must be performed in accordance with MDE's Toxic Substance Analytical Protocol, which specifies sample types, analytical methodology, detection levels, holding times, preservation methods, and reporting requirements.[26] Monitoring for PCBs is required to be conducted in accordance with the EPA protocols specified by MDE in "Reporting Requirements for Total PCBs (PCB Congeners) by EPA Method 1667 C or A."[27] When an MDE review of toxicity test data indicates unacceptable acute or chronic toxicity in effluent, the permittee must conduct a Toxicity Reduction Evaluation ("TRE") following the framework and timeline established in the permit.[28] If substances other than those named in the permit are discovered during toxic chemical testing, the permittee must identify and quantify the ten substances present in the highest concentration for those compounds for which standards are

[21] Maryland Department of the Environment, *Inspection Report for Back River Wastewater Treatment Plant- June 16, 2021* 4 [hereinafter "2021 Back River Inspection"].
[22] Patapsco Permit, *supra* note 6, at 6.
[23] *Id*. at 10.
[24] *Id*. at 7.
[25] *Id*. at 13, Special Condition B(2).
[26] *Id*. at 12, Special Condition B(1).
[27] *Id*. at 12, Special Condition B(1).
[28] *Id*. at 18-19, Special Condition E.

available.[29] The permittee must also submit an annual Wastewater Flow Capacity Report.[30] In accordance with Consent Order CO-16-2405 between the Patapsco Facility and MDE, the Facility must develop and implement a FOG mitigation plan to achieve the maximum practicable reduction in FOG discharges.[31] The permit also contains a number of general maintenance, operations, and reporting requirements.[32]

Back River WWTP

The Back River Permit contains effluent limitations for the following pollutants: biological oxygen demand (BOD), total suspended solids (TSS), total ammonia, nitrogen (as N), total phosphorus, total polychlorinated biphenyls (tPCBs), E. coli, total residual chlorine, pH, dissolved oxygen, WET acute toxicity, and WET chronic toxicity.[33] Further, the Back River Permit contains monitoring requirements for the following pollutants: BOD, TSS, total ammonia nitrogen (as N), total phosphorus (as P), total nitrogen (as N), nitrite/nitrate (as N), organic nitrogen (as N), orthophosphate (as P), E. coli, total residual chlorine, dissolved oxygen, pH, copper, free cyanide, chromium, tPCBs, WET acute toxicity, and WET chronic toxicity.[34] The effluent limitations and monitoring requirements in the Back River Permit were based on an annual average flow of 180.0 million gallons per day from outfalls 001A and 002A.[35]

The Back River WWTP permit also contains a number of special conditions. Under the permit, several reports are required to be submitted, including: Effluent Biomonitoring Study Plan and Toxic Chemical Testing Plan; Effluent Biomonitoring Study Report (including definitive annual chronic testing); Effluent Toxic Chemical Testing Report; and, Wastewater Capacity Management Plan; Flow Capacity Report (annual).[36] All toxic chemical monitoring must be performed in accordance with MDE's Toxic Substance Analytical Protocol, which specifies sample types, analytical methodology, detection levels, holding times, preservation methods, and reporting requirements.[37] Quarterly WET samples are required to be collected, analyzed, and reported in accordance with MDE's "Effluent Biotoxicity Testing Protocol for Industrial and Municipal Effluents."[38] Results from biomonitoring and toxic chemicals tests must be reported no later than the 28th day of the month following the completion of the test.[39] When an MDE review of toxicity test data indicates unacceptable acute or chronic toxicity in effluent, the permittee must conduct a Toxicity Reduction Evaluation ("TRE") following the framework and timeline established in the permit.[40] If substances other than those named in the permit are

[29] *Id*. at 20, Special Condition F(5).
[30] *Id*. at 14, Special Condition C.
[31] *Id*. at 22-23, Special Condition M.
[32] *Id*. at 23-34.
[33] Back River Permit, *supra* note 17, at 6-7.
[34] *Id*. at 10.
[35] *Id*. at 6-7.
[36] *Id*. at 13, Special Condition B(2).
[37] *Id*. at 12, Special Condition B(1).
[38] *Id*. at 12, Special Condition B(1).
[39] *Id*. at 13, Special Condition B(2).
[40] *Id*. at 18-19, Special Condition E.

discovered during toxic chemical testing, the permittee must identify and quantify the ten substances present in the highest concentration for those compounds for which standards are available.[41] The permit also contains a number of general maintenance, operations, and reporting requirements.[42]

III. THE AFFECTED WATER BODIES

Patapsco WWTP

The Patapsco Facility discharges into the Patapsco River Mesohaline sub-watershed 7.5 miles from the River's confluence with the Chesapeake Bay.[43] The Patapsco River Mesohaline Chesapeake Bay Segment is a tidal estuary located on the western shore of the Chesapeake Bay that includes the Baltimore Harbor, Curtis Creek, and Bear Creek.[44] Both the Patapsco River and the Chesapeake Bay are designated Use II waters for support of estuarine and marine aquatic life and shellfish harvesting.[45] This waterbody is routinely used by recreational boaters and for fishing.

The waterways in the Patapsco River Mesohaline sub-watershed are listed as impaired for the following pollutants: total phosphorus, total nitrogen, total suspended solids, Enterococcus, toxics (polychlorinated biphenyls, or PCBs), chlordane, impacts to biological communities, and debris/Floatables.[46] TMDLs for the Patapsco River Mesohaline have been established for nitrogen (2007), phosphorus (2007), and trash and debris (2016).[47] In addition, TMDLs have been established for the Baltimore Harbor for chlordane (2001) and PCBs (2012).[48] The Patapsco River is also part of the Chesapeake Bay TMDL, established in 2010, which limits total nitrogen, total phosphorus, and TSS entering the Chesapeake Bay.[49]

Back River WWTP

The Back River Facility discharges into the Back River 6.3 miles from its confluence with the Chesapeake Bay.[50] The Back River is designated as a Use II water for support of estuarine and marine aquatic life and shellfish harvesting.[51] The river is regularly used for recreational boating

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[41] *Id*. at 20, Special Condition F(5).
[42] *Id*. at 23-34.
[43] Patapsco Fact Sheet, *supra* note 2, at 4.
[44] Maryland Department of the Environment, *Final TMDLs Approved by EPA: Baltimore Harbor,* https://mde.maryland.gov/programs/Water/TMDL/ApprovedFinalTMDLs/Pages/TMDL_Final_BaltHarbor_PCBs.aspx (last accessed Sept. 16, 2021).
[45] *Id*.; *see also* Patapsco Fact Sheet, *supra* note 2, at 4.
[46] Patapsco Fact Sheet, *supra* note 2, at 4.
[47] See Maryland Department of the Environment, *Maryland's 2018 Final Integrated Report - Category 4a Waters* 40-44 (2019), https://mde.maryland.gov/programs/Water/TMDL/Integrated303dReports/Documents/Integrated_Report_Section_PDFs/IR_2018/2018IR_Part_F.4_Final.pdf (last accessed Oct. 4, 2021).
[48] *Id.* at 42.
[49] Patapsco Fact Sheet, *supra* note 2, at 5.
[50] Back River Fact Sheet, *supra* note 13, at 4.
[51] *Id*.

and fishing. Many of the residents who own waterfront property along the Back River have installed piers to access and enjoy the aesthetics of the river.

The waterways in the Back River subwatershed are listed as impaired for the following pollutants: PCBs in sediment and fish tissue, sediments, chlordane, nitrogen and phosphorus, chlorides, and sulfates.[52] TMDLs for the Back River have been approved for nutrients (established in 2005), chlordane (1999), zinc (2004), PCBs (2005), and E. coli (2007).[53] The TMDLs for nutrients and PCBs for the Baltimore Harbor (established in 2007 and 2012, respectively) also apply to the Back River.[54] In addition, the Back River is part of the Chesapeake Bay TMDL which limits discharges of nitrogen, phosphorus, and sediments.[55]

As long as these two Facilities continue their effluent limit exceedances, failures to report, and continue to fail to comply with the terms and conditions of their NPDES permits, they will further degrade already sensitive surface waters in the Patapsco and Back River watersheds in violation of the CWA as described in this letter.

Further, according to the Chesapeake Bay Program, as of 2019, Maryland still needs to reduce more than five million pounds of nitrogen per year to achieve the 2025 target under the Total Maximum Daily Load for the Chesapeake Bay.[56] The Patapsco and Back River Facilities are among the largest single sources of nutrient pollution in Maryland and the entire Chesapeake Bay watershed. Achieving the waste load allocation at these facilities is critical to ensuring that Maryland's Watershed Implementation Plan and the 2025 Bay TMDL targets can be achieved. Pollution violations at these plants jeopardize Maryland's ability to meet the Bay TMDL goals.

II. VIOLATIONS OF THE CLEAN WATER ACT

To the best of Claimants' knowledge and belief, Baltimore City has not remedied the violations enumerated below and this failure is an ongoing and continuous violation of the Permits. It is unlawful to discharge pollutants to waters of the United States, such as the Patapsco River and Back River, in violation of the terms and conditions of a NPDES permit. 33 U.S.C. § 1311(a). Both facilities are discharging pollution in violation of their NPDES permits described below. Additionally, each instance of a violation, plus each day that the violation was not corrected, is subject to a civil penalty not to exceed $56,460 for each violation and each day the violation continues. This suit, when filed, will also address any reporting violations that are identified for the months subsequent to the most recent month detailed in this Notice letter.

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[52] *Id.*
[53] *Id.* at 5.
[54] *Id.*
[55] *Id.*
[56] ChesapeakeProgress, *2025 Watershed Implementation Plans (WIPs)*, https://www.chesapeakeprogress.com/clean-water/watershed-implementation-plans (last accessed Oct. 4, 2021)

A. ***Patapsco WWTP - NPDES Permit MD0021601***

1. Failure to Comply with the Permit's Effluent Limits

The Patapsco Facility operates pursuant to a discharge permit issued by MDE. NPDES Permit MD0021601 was renewed with an effective date of October 1, 2017. The current permit will expire on September 30, 2022. The Patapsco Permit imposes monthly and weekly loading rates and concentration limits on biological oxygen demand (BOD), total suspended solids (TSS), total ammonia, nitrogen (as N), and total phosphorus.[57] The Permit also contains effluent limits for enterococci, total residual chlorine, pH, and dissolved oxygen.[58] The Chesapeake Bay TMDL allocates a waste load (which is reflected as annual limits in the Facility's permit) of 889,304 pounds of total nitrogen, 66,698 pounds of total phosphorus, and 6,669,776 pounds of TSS to the Patapsco Facility.[59] Seasonal limits, in place from May 1 through October 31, limit discharges to 33,330 lbs of total phosphorus and 333,330 lbs of total nitrogen.[60] The Facility has continuously and significantly violated the pollution limits established for nitrogen and phosphorus.[61] In recent months, the Facility has repeatedly exceeded its limits for TSS, enterococci, and BOD.[62] Upon information and belief, these exceedances are continuing.

Appendix I contains a table summarizing effluent limit violations for the Patapsco Facility reported on the Environmental Protection Agency ("EPA") Enforcement and Compliance History Online ("ECHO") database. These data show that the Facility has violated the Permit's limits at least 124 times from January 2017 - August 2021, for a total of 864 exceedance days.[63] This suit, when filed, will also address any ongoing and/or subsequent violations to those violations discussed herein.

2. Violations of Other Permit Conditions

Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A), entitles citizens to bring suit against "any person…alleged to be in violation" of an "effluent standard or limitation" established under the CWA. Section 505(f) defines "effluent standard or limitation" broadly to include "a permit or condition of a permit issued under Section 402 that is in effect under the [CWA]." The Permit was issued under Section 402 and is both a State of Maryland discharge permit and a federal NPDES Permit pursuant to Section 402. Therefore, violations of conditions

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[57] Patapsco Permit, *supra* note 6, at 6.
[58] *Id.* at 7.
[59] Patapsco Fact Sheet, *supra* note 2, at 7.
[60] *Id.* at 7.
[61] Environmental Protection Agency, *ECHO Effluent Limit Exceedances Report NPDES, Permit MD0021601* https://echo.epa.gov/trends/loading-tool/reports/effluent-exceedances?permit_id=MD0021601 ("Adjust Date Range" to Jan. 2017 - Aug. 2021 > "Apply Changes").
[62] *Id*.
[63] *Id*.

of this NPDES permit are violations of federal law and eligible for CWA citizen suit enforcement.

As stated above, the Permits for both Facilities contain numerous special conditions. In the letter to Baltimore City Department of Public Works from MDE dated August 23, 2021, MDE identified numerous areas where both Facilities were violating these special conditions.

a. Failure to comply with Special Condition B(1) and F(4) requiring adequate testing and reporting of PCBs

Special Condition B(1) of the Patapsco Permit requires the Facility to monitor tPCBs year round by reporting a 24-hour composite measure from a sample taken quarterly.[64] Monitoring for PCBs and all other toxic chemicals monitoring required by the Patapsco Permit is required to be performed in accordance with protocols specified by MDE that include specifications of "analytical methodology, detection levels, holding times, preservation methods, sample types and reporting.[65] The May 6, 2021, inspection at Patapsco revealed that operators were failing to properly collect rinsate and equipment blanks for tPCB testing.[66] Furthermore, results from tPCB testing were being reported inaccurately for the purposes of the Patapsco's PCB TMDL.[67] The Facility neglected to report a second quarterly sample taken on 1/12/2021, and failed to report 12 PCB congeners that are specified in MDE's "Reporting Requirements for PCBs (PCB Congeners by EPA method 1668 A or C Rev 11/9/2017)" guidance document.[68] Both total PCBs and individually measured congeners must be reported under Special Condition F(4) of the Patapsco Permit.[69]

Information obtained through PIA requests shows that improper PCB testing is an ongoing issue at the Patapsco Plant. In April of 2019, Patapsco operators sought and received guidance from MDE on reporting lab results for PCBs upon completion of the Plant's ENR upgrade.[70] In October and November of 2019, Patapsco operators again sought guidance on how to report PCBs following ENR upgrades.[71] MDE provided guidance on two acceptable ways of performing calculations and a clarification about testing requirements. In November 2019, a Patapsco operator again sought clarification on PCB reporting, this time because of confusion at Patapsco resulting from a difference in reporting formats that differed across laboratories. In reviewing the data from Patapsco, MDE employees noted that the method blanks did not meet

[64] Patapsco Permit, *supra* note 6, at 10, Special Condition B(1).
[65] *Id*. at 12, Special Condition B(1) n. 15,
[66] Letter from D. Lee Currey, *supra* note 10, at 3; *see also* 2021 Patapsco Inspection, *supra* note 11, at 6.
[67] Letter from D. Lee Currey, *supra* note 10, at 3.
[68] *Id*.
[69] Patapsco Permit, *supra* note 6, at 20.
[70] E-mail from Robert Lombardi, Pollution Control Analyst, Baltimore City Department of Public Works, to Patrick Noyes, Enforcement Division, Compliance Program, Water and Science Administration, Maryland Department of the Environment (Apr. 1, 2019, 12:18 EDT) (on file with Chesapeake Legal Alliance).
[71] E-mail from Robert Lombardi, Pollution Control Analyst, Baltimore City Department of Public Works, to Patrick Noyes, Enforcement Division, Compliance Program, Water and Science Administration, Maryland Department of the Environment (Oct. 28, 2019, 18:39 EDT) (on file with Chesapeake Legal Alliance).

contamination rules, results for equipment rinsate blanks were not present, and the Facility was overdue for an inspection. [72]

b. Failure to comply with Special Condition F requiring adequate toxic chemical testing

Special Condition F of the Patapsco Permit requires toxic chemical testing concurrently with the biomonitoring program required elsewhere in the permit.[73] The Facility must test for all chemicals identified in MDE's Toxic Pollutant Monitoring Protocol and Reporting Requirements for Toxic Chemical Testing Analytical Data and must perform the tests in accordance with 40 CFR Part 136 and the Department-approved toxic chemical testing plan.[74] Inadequate testing and reporting of toxic chemicals has been an ongoing problem at the Facility. According to MDE following the May 2021 inspection of the Patapsco Facility, the Facility was failing to meet the sampling and analytical requirements for the 2021 Toxic Chemical testing and failing to properly collect rinsate and equipment blanks for toxic chemical testing.[75] In addition, a routine inspection of the Facility on September 26, 2018, showed that acrolein and cyanide were not being quantified to the level specified in the Permit and that incorrect sampling methods were used for phenols.[76] The report also stated that there were "additional concerns regarding toxic chemical testing that will be resolved as a later date after further investigations and discussions with the permittee.[77]

c. Failure to comply with Special Condition B(2) requiring Failure to submit an updated 2020 Wastewater Capacity Management Plan

Wastewater Capacity Management Plans ("WCMP") are required where a plant has a three-year average flow at or above 80% of its design capacity.[78] Special Condition B(2) of the Patapsco Permit requires the Facility to submit a WCMP within 90 days of the effective date of the permit.[79] The most recent WCMP for Patapsco was the 2017 Wastewater Capacity Management Plan, submitted February 9, 2019.[80] A three-year update of the WCMP for the period ending December 2020 is required, but inspection of the Patapsco Facility during summer 2021 discovered that an updated 2020 WCMP had not been submitted.[81]

d. Failure to Comply with Special Condition M requiring mitigation of FOGs

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[72] E-mail from Ron Wicks, Maryland Department of the Environment, to Patrick Noyes, Enforcement Division, Compliance Program, Water and Science Administration, Maryland Department of the Environment (Nov. 22, 2019, 12:07 EST) (on file with Chesapeake Legal Alliance).
[73] Patapsco Permit, *supra* note 6, at 20, Special Condition F.
[74] *Id*.
[75] Letter from D. Lee Currey, *supra* note 10, at 3; *see also* 2021 Patapsco Inspection, *supra* note 11, at 4-5.
[76] Maryland Department of the Environment, *Inspection Report for Patapsco Wastewater Treatment Plant- Sept. 26, 2018* 4 [hereinafter "2018 Patapsco Inspection"].
[77] *Id*.
[78] Patapsco Permit, *supra* note 6, at 14, Special Condition C.
[79] *Id*. at 13, Special Condition B(2).
[80] 2021 Patapsco Inspection, *supra* note 11, at 9.
[81] Letter from D. Lee Currey, *supra* note 10, at 3.

In 2016, MDE and Baltimore City entered into a Consent Agreement to address, among other things, unauthorized discharges of FOGs from the Patapsco Facility.[82] The Agreement specified that the Patapsco Plant would submit a plan and schedule for the repair of skimmers at the Facility and would comply with the plan once approved.[83] The Facility's Permit requires the permittee to submit a FOG mitigation plan for MDE approval, which must include regular maintenance and repair of the Plant's skimmers in accordance with the Consent Agreement.[84] Maintenance and repair of these systems has not been occurring. The FOG mitigation plan was revised in November 2017, but the May 6, 2021 inspection of the Facility revealed that the current plan is not accurate or consistent with current Facility operations.[85] Only 5 of 18 primary settling tanks were operational; planned replacement or refurbishment of the actuators, flight plant brackets, and scum troughs had not yet begun, and most of the problems identified in the mitigation plan had not been corrected.[86] Furthermore, the permittee is required to send annual updates to MDE detailing the measures taken to comply with the FOG mitigation plan,[87] but the annual update was not submitted in 2018, 2019, or 2020.[88] Therefore, the Facility is in violation of the FOG mitigation conditions of its permit, as well as the Consent Agreement.[89]

e. Failure to Comply with General Condition A regarding monitoring and reporting

General Condition A requires the Patapsco Facility to, among other things, take representative samples of discharge and conform to test procedures identified in 40 CFR Part 136.[90] The Facility has a pattern and practice handling samples in an unsatisfactory manner, resulting in unreportable data. Inspection reports and documents obtained through PIA request from 2016 through 2021 that indicate repeated instances sampling errors, including:

- December 8, 22, and 23, 2017: BOD5 samples were analyzed outside of the specified holding time, resulting in no reportable results.[91]
- December 25, 2017: samples collected for orthophosphate were analyzed beyond the specified holding time, resulting in no reportable results.[92]
- September 26, 2018: a routine MDE inspection found deficiencies in sample handling and in the reporting of toxic chemical testing to the Department.[93]
- September 22, 2020: shipping errors caused cyanide samples to arrive late at the testing laboratory, resulting in holding times and temperature criteria being exceeded.[94]

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[82] Consent Agreement, Maryland Department of the Environment v. Mayor and City Council of Baltimore 5 (CO-16-2405, Maryland Secretary of the Environment, June 7, 2016).
[83] *Id*.
[84] Patapsco Permit, *supra* note 6, at 22-23, Special Condition M.
[85] 2021 Patapsco Inspection, *supra* note 11, at 8-9.
[86] *Id*.
[87] Patapsco Permit, *supra* note 6, at 23, Special Condition M(d).
[88] 2021 Patapsco Inspection, *supra* note 11, at 9.
[89] *Id.*
[90] Patapsco Permit, *supra* note 6, at 23-25.
[91] 2018 Patapsco Inspection, *supra* note 76, at 3.
[92] *Id*.
[93] *Id.* at 3-4.
[94] 2021 Patapsco Inspection, *supra* note 11, at 4.

- September 24, 2020: no samples were taken because of a possible covid exposure.[95]
- November 22, 2020: deficiencies occurred in the BOD sample chain of command and the sample was processed outside of the specified holding time.[96]
- December 11, 2020: the TSS sample was analyzed beyond the specified holding time.[97]
- December 12, 2020: the TSS sample was analyzed beyond the specified holding time.[98]
- December 21, 2020: the orthophosphorus sample was lost and a new sample was required to be collected on December 24.[99]
- January 25, 2021: the Facility's phosphorous sample, required three times per month, was missed.[100]
- January 25, 2021: the Facility's TSS sample was run outside of the specified holding time.[101]
- January 25, 2021: staff failed to filter the orthophosphorus sample within 15 minutes of collection as is required under 40 C.F.R. Part 136.[102]
- March 12, 2021: the testing laboratory discarded samples for BOD and TSS.[103]

f. Failure to Comply with General Condition B(3) regarding facilities operation

General Condition B(3) of the Patapsco Permit requires the Plant to be operated efficiently to minimize upsets and discharges of excessive pollutants.[104] The violations described above demonstrate that this is not occurring. Furthermore, the Facility has a pattern and practice of poor operational practices evinced by inspection reports and documents obtained through PIA request from 2016 through 2021 that indicate repeated instances of the Facility failing to operate its treatment, control, and monitoring systems efficiently and in good working order. Reports include:

- April 2017: a routine inspection found effluent exceedances, inappropriate testing procedures, deficiencies in the flow monitoring documentation system, and recorded overflows into the Patapsco River.[105]

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[95] Maryland Department of the Environment, Telephone Report of Discharge Permit Non-Compliance Form (Oct. 14, 2020) (on file with Chesapeake Legal Alliance); *see also* 2021 Patapsco Inspection, *supra* note 11, at 4.
[96] Letter from Neal Jackson, Plant Manager, to Sharon Talley, Chief, MDE Water Management Administration Compliance Program Enforcement (Dec. 28, 2020) (on file with Chesapeake Legal Alliance); *see also* 2021 Patapsco Inspection, *supra* note 11, 4.
[97] 2021 Patapsco Inspection, *supra* note 11, at 4.
[98] *Id*.
[99] *Id*.
[100] Maryland Department of the Environment, Telephone Report of Discharge Permit Non-Compliance Form (Feb. 24, 2021) (on file with Chesapeake Legal Alliance).
[101] *Id*.
[102] 2021 Patapsco Inspection, *supra* note 11, at 4.
[103] *Id*.
[104] Patapsco Permit, *supra* note 6, at 27.
[105] *See generally* Maryland Department of the Environment, *Inspection Report for Patapsco Wastewater Treatment Plant - Apr. 6, 2017*.

- July 24, 2018: 250,000 gallons of diluted sewage overflowed after heavy rainfall in Baltimore City.[106]
- February 7, 2019: a pump seal failure in the acid phase reactor caused a 600-gallon sludge spill at the Facility.[107]
- March 2019: the Facility's contractor did not have adequate operators and alternative equipment available while renovating Dryer Train #1, which resulted in increased sludge blankets and caused an enterococcus excursion.[108]
- July 2019: the Facility had ongoing issues with sludge blending tanks which caused high levels of sludge blankets in the Plant and caused an enterococcus excursion.[109]
- January 2020: the Facility experiences an upset in the ENR system which required flow to be reduced for two weeks while cleaning occurred, resulting in an enterococcus violation.[110]
- June 8, 2020: the Facility spilled between 60 and 100 gallons of raw sewage onto the streets between the Facility and the ramp to I-695 when an overfilled transport vehicle moved between Patapsco and the Quarantine Road Landfill.[111]
- July 2020: equipment failures and delays in replacement parts lead to the development of high solids blankets resulting in enterococcus discharge violations; only some repairs had been made at the time the violation was reported to MDE in August.[112]
- August 2020: electrical problems prevented filters from being backwashed for two weeks, resulting in a high buildup of solids requiring flow diversions.[113]
- September 25, 2020: due to a power outage, the Facility was unable to disinfect for four hours.[114]

These reports and the facts contained therein indicate that the Facility is failing to operate its treatment, control, and monitoring facilities efficiently and in good working order in violation of General Condition B(3).

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[106] Letter from Gary J. Wagner, Plant Manager, to Sharon Talley, Chief, MDE Water Management Administration Compliance Program Enforcement (Jul. 25, 2018) (on file with Chesapeake Legal Alliance).
[107] Letter from Marshall Phillips, Plant Manager, to Sharon Talley, Chief, MDE Water Management Administration Compliance Program Enforcement (Feb. 8, 2019) (on file with Chesapeake Legal Alliance).
[108] Letter from Gary J. Wagner, Plant Manager, to Sharon Talley, Chief, MDE Water Management Administration Compliance Program Enforcement (Apr. 2, 2019) (on file with Chesapeake Legal Alliance).
[109] Letter from Gary J. Wagner, Plant Manager, to Sharon Talley, Chief, MDE Water Management Administration Compliance Program Enforcement (Aug. 8, 2019) (on file with Chesapeake Legal Alliance).
[110] Letter from Lawrence K. Fischer, Acting Plant Manager, to Sharon Talley, Chief, MDE Water Management Administration Compliance Program Enforcement (Feb. 6, 2020) (on file with Chesapeake Legal Alliance).
[111] Maryland Department of the Environment, *Inspection Report for Patapsco Wastewater Treatment Plant - June 11, 2020* 1-2.
[112] Letter from Neal Jacksonr, Acting Plant Manager, to Sharon Talley, Chief, MDE Water Management Administration Compliance Program Enforcement (Aug. 6, 2020) (on file with Chesapeake Legal Alliance).
[113] Letter fromNeal Jackson, Acting Plant Manager, to Sharon Talley, Chief, MDE Water Management Administration Compliance Program Enforcement (Sept. 21, 2020) (on file with Chesapeake Legal Alliance).
[114] Maryland Department of the Environment, Telephone Report of Discharge Permit Non-Compliance Form (Sept. 25, 2020) (on file with Chesapeake Legal Alliance).

g. General Condition B(4) regarding adverse impact

General Condition B(4) requires the Facility to take reasonable steps to minimize adverse impacts from noncompliance and to perform accelerated or additional monitoring as necessary to determine the nature and impact of noncomplying discharge.[115] The repeated effluent exceedances, sampling deficiencies, and reporting failures described above demonstrate that the Facility has not taken all reasonable steps to minimize or prevent adverse impact to waters of the State, human health, or the environment.

B. *Patapsco WWTP - Violations of 12SW0629 / MDR000629 Permit*

1. Failure to Comply with the Stormwater Pollution Prevention Plant (SWPPP)

In 2017, an unannounced routine inspection of the Patapsco Facility revealed noncompliance with the Site's SWPPP required under the General Permit for Discharges of Stormwater Associated with Industrial Activity (Permit 12SW0629/MDR000629)[116] The permittee was not conducting the required quarterly SWPPP compliance inspections and visual inspections, and the permittee was failing to either certify that the Facility was in compliance with its SWPPP or record the violations found. The 2016 annual inspection report was also deficient; the permittee failed to conduct an evaluation to the degree specified in its permit and failed to address a problem that was recorded. After the inspection, MDE recommended the Patapsco Facility develop a site-specific inspection checklist, since the one used was general in nature.

C. *Back River WWTP - NPDES Permit MD0021555*

As discussed above, Section 505(a)(1)(A) of the CWA, 33 U.S.C. § 1365(a)(1)(A), entitles citizens to bring suit against "any person…alleged to be in violation" of an "effluent standard or limitation" established under the CWA. Section 505(f) defines "effluent standard or limitation" broadly to include "a permit or condition of a permit issued under Section 402 that is in effect under the [CWA]." The Permit was issued under Section 402 and is both a State of Maryland discharge permit and a federal NPDES Permit pursuant to Section 402. Therefore, violations of conditions of an NPDES permit are violations of federal law and eligible for CWA citizen suit enforcement.

And as further noted above, the Permits for both Facilities contain numerous special conditions. In the letter to Baltimore City Department of Public Works from MDE dated August 23, 2021, MDE identified numerous areas where both Facilities were violating these special conditions.

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[115] Patapsco Permit, *supra* note 6, at 27, General Condition B(4).

[116] Maryland Department of the Environment, *WMA Industrial Stormwater Facility Report - Patapsco Wastewater Treatment Plant* (May 9, 2017).

1. Failure to Comply with the Permit's Effluent Limits for Nitrogen, Phosphorous, TSS, and BOD

The Back River Facility also operates pursuant to a discharge permit issued by MDE. NPDES Permit MD0021555 was renewed with an effective date of May 1, 2018. The current permit will expire on April 30, 2023. The Back River Permit imposes monthly and weekly limits on BOD, TSS, total ammonia, nitrogen (as N), and total phosphorus.[117] The Chesapeake Bay TMDL allocates waste load (which is reflected as annual limits in the Facility's permit) of 2,192,800 pounds of total nitrogen, 109,600 pounds of total phosphorus, and 8,548,254 pounds of TSS to the Back River Facility.[118] Seasonal limits in place from May 1 to October 21 limit discharges from outfall 001A to 99,782 lbs/month of nitrogen and 6,652 lbs/month of phosphorus.[119] Outfall 002A's seasonal limits are 230,294 lbs/season of nitrogen and 15,353 lbs/season of phosphorus.[120] The waste load is divided between the two outfalls.[121] The Facility has continuously and significantly violated the pollution limits established for nitrogen, phosphorus, TSS, and BOD.[122] On information and belief, these exceedances continue.

Appendix II contains a table summarizing effluent limit violations for the Back River Facility reported on the EPA ECHO database. These data show that the Facility has violated the Permit's limits at least 130 times from January 2017 - August 2021, for a total of 1,515 exceedance days.[123] This suit, when filed, will also address any ongoing and/or subsequent violations to those violations discussed herein.

2. Violations of Other Permit Conditions

a. Failure to Comply with Special Condition B specifying tPCB testing and reporting

The Back River TMDL for PCBs, established in 2012, included a WLA of 48.5 grams/year of tPCBs from outfall 001A of the Back River Facility.[124] The tPCB limit for outfall 002A of the Facility is 18.66 grams/year, as set forth in the TMDL for Baltimore Harbor. Special Condition B(1) of the Back River Permit requires the Facility to monitor tPCBs year round by reporting a 24-hour composite measure from a sample taken quarterly.[125] Monitoring for PCBs and all other toxic chemicals monitoring required by the Back River Permit is required to be performed in accordance with protocols specified by MDE that include specifications of "analytical methodology, detection levels, holding times, preservation methods, sample types and

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[117] Back River Permit, *supra* note 17, at 7.
[118] *Id*. at 8.
[119] *Id*. at 6.
[120] *Id*. at 7.
[121] *Id*.
[122] Environmental Protection Agency, *ECHO Effluent Limit Exceedances Report: NPDES Permit MD0021555* https://echo.epa.gov/trends/loading-tool/reports/effluent-exceedances?permit_id=MD0021555 ("Adjust Date Range" to Jan. 2017 - Aug. 2021 > "Apply Changes") (last accessed Oct. 4 2021).
[123] *Id*.
[124] Back River Permit, *supra* note 17, at 8, Special Condition A(1) n. 4(b) and A(2) n .4(c).
[125] *Id*. at 10, Special Condition B(1).

reporting."[126] During the inspection of the Back River Plant that began on June 16, 2021, MDE reviewed laboratory reports for tPCB monitoring at the Facility and found that rinsate blanks were regularly contaminated in 2019 and 2020, calling into question the validity of the testing performed.[127] In addition, the laboratory reports were incomplete because they did not contain concentration information for 12 PCB congeners required to be reported under the Back River Permit,[128] nor did the reports contain the method blank results that are needed to determine if testing criteria have been satisfied.[129]

b. Failure to Comply with Special Condition D requiring a biomonitoring program

Quarterly chronic testing is required at the Back River Facility.[130] The Back River Permit specifies that when two consecutive toxicity tests at the Facility show acute or chronic toxicity, a repeat test must be performed within 30 days to confirm the findings.[131] WET tests on February 25, 2021 and May 25, 2021, indicated that effluent from the Facility was chronically toxic to *Americamysis bahia*.[132] The required confirmation test was not performed by the Facility.[133] Furthermore, the Facility conducted annual toxic chemical testing in February 2021, the results of which were due to MDE in April 2021 but had not yet been received by the Facility (and thus not reported to MDE) at the time of the inspection.[134]

c. Failure to Comply with General Condition B(1) regarding permit noncompliance notification requirements

General Condition B(1) of the Back River Permit requires the Facility to notify MDE by telephone within 24 hours of any noncompliance with any permit condition.[135] In addition, the Facility must follow up in writing within 5 days to provide information about the noncompliance, including a description of the discharge, the cause of the discharge, the duration of the discharge, and steps being taken to reduce and eliminate the noncomplying discharge.[136] During the inspection of the Back River Plant conducted this summer, MDE identified many effluent violations between August 2020 and May 2021 for which no notification was provided to MDE, in violation of the terms of the Facility's Permit.[137]

d. Failure to Comply with General Condition B(11) regarding reports and information

General Condition B(11) of the Back River Permit requires the permittee to provide MDE with copies upon request of records that are required to be kept by the Permit.[138] The U.S. EPA

[126] *Id*. at 12, Special Condition B(1) n. 16,
[127] 2021 Back River Inspection, *supra* note 21, at 3-4.
[128] Back River Permit, *supra* note 17, at 20, Special Condition F(4).
[129] 2021 Back River Inspection, *supra* note 21, at 5.
[130] Back River Permit, *supra* note 17, at 15, Special Condition D(2).
[131] *Id*. at 16, Special Condition D(10).
[132] 2021 Back River Inspection, *supra* note 21, at 3.
[133] *Id*.
[134] *Id*.
[135] Back River Permit, *supra* note 17, at 26, Special Condition B(1).
[136] *Id*.
[137] 2021 Back River Inspection, *supra* note 21, at 3 and Table 4 at 7-15.
[138] Back River Permit, *supra* note 17, at 29, Special Condition B(11).

conducts a DMR-Quality Assurance (DMR-QA) program to evaluate the analytical ability of the laboratories that perform self-monitoring analyses required by NPDES permits.[139] Permittees required to participate in a DMR-QA study must report results for permitted analytes that are on the study analyte list.[140] DMR-QA study 41 was initiated in April 2021, and requires permittees to submit results from chemistry, microbiology and Whole Effluent Toxicity (WET) tests. At the time of the Facility inspection in June 2021, the Back River Facility had failed to provide a response to the Maryland State DMR/QA Coordinator regarding the Facility's required participation in Study 41.[141] This failure to respond is a violation of the Facility's responsibilities specified in General Condition B(11).

e. Failure to Comply with General Condition B(3) regarding Facility Operation and Quality Control

General Condition B(3) of the Back River Permit requires the Facility to be operated efficiently to minimize upsets and discharges of excessive pollutants.[142] As described above, Back River is experiencing numerous effluent violations as well as deficiencies in sample collection, problems with laboratory testing analysis, deficiencies in the collection of quality assurance samples, and failures of reporting.

Operational and maintenance issues at the Back River Facility have led to effluent violations.[143] The main centrifuge at the plant has not been functioning satisfactorily since mid-2020, resulting in improper processing of solids.[144] This in turn has caused excessive TSS, BOD, and phosphorus discharges.[145] MDE's inspector noted that these problems may have been preventable by routine maintenance.[146] The inspector also found broken and malfunctioning equipment throughout the Plant further contributing to its poor performance and also preventable through regular maintenance.[147] Furthermore, the Facility is required to provide adequate operating staff, and superintendents and operators must be certified by the Board of Waterworks and Waste System Operators.[148] The June 2021 inspection of Back River revealed that of the Facility's 76 certified operators, only 2 hold permanent licenses; the remainder have temporary licenses.[149] The inspector further observed that, due to the treatment, operational changes, equipment failures, and effluent violations at the Facility, Back River requires an updated Operations and Maintenance Manual. The deficiencies show that the Facility is failing to operate efficiently and in good working order in violation of General Condition B(3).

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[139] Environmental Protection Agency, *Discharge Monitoring Report-Quality Assurance Study Program*, https://www.epa.gov/compliance/discharge-monitoring-report-quality-assurance-study-program (last accessed Oct. 4, 2021).
[140] *Id*.
[141] 2021 Back River Inspection, *supra* note 21, at 26-27.
[142] Back River Permit, *supra* note 17, at 27, General Condition 3(a)
[143] 2021 Back River Inspection, *supra* note 21, at 26.
[144] *Id*. at 2.
[145] *Id*.
[146] *Id*.
[147] *Id*. at 6.
[148] Back River Permit, *supra* note 17, at 27, General Condition 3(b).
[149] 2021 Back River Inspection, *supra* note 21, at 6.

f. Failure to Comply with General Condition B(4) regarding adverse impact

General Condition B(4) requires the Facility to take reasonable steps to minimize adverse impacts from noncompliance and to perform accelerated or additional monitoring as necessary to determine the nature and impact of non-complying discharge.[150] The claims above demonstrate that the Facility has not done this. Notably, the Facility did not comply with the requirement to conduct a third toxic test following two consecutive tests showing acute or chronic toxicity.[151] In addition, the Facility reported that the main centrifuge had been malfunctioning since January 2021, but evidence of effluent violations led an MDE inspector to conclude malfunctioning began much earlier.[152] Furthermore, operators did not contract for temporary centrifuges to be provided until March 2021.[153] The Facility has therefore not taken all reasonable steps to minimize or prevent adverse impact to waters of the State, human health, or the environment.

V. PARTY GIVING NOTICE

Blue Water Baltimore is a 501(c)(3) nonprofit organization with offices located at 2631 Sisson St, Baltimore, MD 21211 and the main phone number is (410) 254-1577. Baltimore Harbor Waterkeeper, a program of Blue Water Baltimore, is responsible for protecting the Patapsco River and Back River watersheds, including all of the neighborhood streams and rivers that discharge into the Patapsco and Back Rivers. Blue Water Baltimore represents members who use these rivers for recreation and sustenance and who actively support Blue Water Baltimore's efforts to protect Baltimore's waterways. Blue Water Baltimore's mission is to protect and restore the Baltimore Harbor and the greater Patapsco and Back Rivers and their tributaries through enforcement, fieldwork, and citizen action on behalf of its members in order to make these waterways suitable for recreation (including fishing and swimming), to improve public health, and to improve the health of the aquatic ecosystems.

VI. CONCLUSION

The Patapsco Wastewater Treatment Plant and the Back River Wastewater Treatment Plant have continually violated and will continue to violate the CWA through discharges on site at 3501 Asiatic Ave, Baltimore, MD 21226, and 8201 Eastern Ave, Baltimore, MD 21224, respectively. Accordingly, Claimant intends to file suit to enjoin and abate the aforementioned violations, ensure future compliance with the CWA, obtain civil penalties, recover attorneys' fees and costs of litigation, and obtain other appropriate relief.

We would welcome an opportunity to discuss a resolution of this matter prior to the initiation of litigation if you are prepared to remedy the violations discussed herein. If you have any questions regarding the allegations in this notice or believe any of the foregoing information may be in

[150] Back River Permit, *supra* note 17, at 27, General Condition B(4).
[151] *See supra* claim IV.C.2.b.
[152] 2021 Back River Inspection, *supra* note 21, at 2.
[153] *Id*. at 2.

error, please contact attorneys for Claimant at the phone numbers or email addresses listed below.

Sincerely,



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Cc:

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Appendix I.

Table 1. Effluent Limit Violations at Patapsco Wastewater Treatment Plant, NPDES Permit MD0021601 (January 2017-August 2021)

Parameter Description	Limit Type	Monitoring Period Date	Limit		Reported Concentration		% Excee-dance
Nitrogen, total (as N)	CUM TOTL	4/30/2017	1104.961	kg/d	1421.924	kg/d	29
Nitrogen, total (as N)	CUM TOTL	5/31/2017	1104.961	kg/d	1784.984	kg/d	62
Nitrogen, total (as N)	CUM TOTL	6/30/2017	1104.961	kg/d	2128.91	kg/d	93
Nitrogen, total (as N)	CUM TOTL	6/30/2017	414.1646	kg/d	706.986	kg/d	71
Phosphorus, total (as P)	CUM TOTL	6/30/2017	82.87516	kg/d	85.23592	kg/d	3
Nitrogen, total (as N)	CUM TOTL	7/31/2017	1104.961	kg/d	2457.926	kg/d	122
Nitrogen, total (as N)	CUM TOTL	7/31/2017	414.1646	kg/d	1036.002	kg/d	150
Phosphorus, total (as P)	CUM TOTL	7/31/2017	41.41273	kg/d	47.96074	kg/d	16
Phosphorus, total (as P)	CUM TOTL	7/31/2017	82.87516	kg/d	101.637	kg/d	23
Nitrogen, total (as N)	CUM TOTL	8/31/2017	1104.961	kg/d	1383.903	kg/d	25
Nitrogen, total (as N)	CUM TOTL	8/31/2017	414.1646	kg/d	2805.827	kg/d	577
Phosphorus, total (as P)	CUM TOTL	8/31/2017	41.41273	kg/d	117.0441	kg/d	183
Nitrogen, total (as N)	CUM TOTL	9/30/2017	414.1646	kg/d	1776.535	kg/d	329
Nitrogen, total (as N)	CUM TOTL	9/30/2017	1104.961	kg/d	3198.459	kg/d	189
Phosphorus,	CUM TOTL	9/30/2017	82.87516	kg/d	130.3389	kg/d	57

total (as P)							
Phosphorus, total (as P)	CUM TOTL	9/30/2017	41.41273	kg/d	76.66263	kg/d	85
Nitrogen, total (as N)	SEAS TDT	10/31/2017	414.1646	kg/d	2168.794	kg/d	424
Nitrogen, total (as N)	CUM TOTL	10/31/2017	1104.961	kg/d	3590.718	kg/d	225
Nitrogen, ammonia total (as N)	MX MO AV	10/31/2017	6.3	mg/L	25	mg/L	297
Nitrogen, ammonia total (as N)	MX MO AV	10/31/2017	1739.683	kg/d	4403.628	kg/d	153
Phosphorus, total (as P)	SEAS TDT	10/31/2017	41.41273	kg/d	89.83319	kg/d	117
Phosphorus, total (as P)	CUM TOTL	10/31/2017	82.87516	kg/d	143.5095	kg/d	73
Nitrogen, total (as N)	CUM TOTL	11/30/2017	1104.961	kg/d	3925.947	kg/d	255
Phosphorus, total (as P)	CUM TOTL	11/30/2017	82.87516	kg/d	157.3013	kg/d	90
Nitrogen, total (as N)	CUM TOTL	12/31/2017	1104.961	kg/d	4255.087	kg/d	285
Phosphorus, total (as P)	CUM TOTL	12/31/2017	82.87516	kg/d	165.2533	kg/d	99
Nitrogen, total (as N)	CUM TOTL	4/30/2018	1104.961	kg/d	1376.945	kg/d	25
Nitrogen, total (as N)	CUM TOTL	5/31/2018	1104.961	kg/d	1775.79	kg/d	61
Nitrogen, total (as N)	CUM TOTL	6/30/2018	1104.961	kg/d	2154.257	kg/d	95
Nitrogen, total (as N)	SEAS TDT	6/30/2018	414.1646	kg/d	777.3118	kg/d	88
Phosphorus, total (as P)	CUM TOTL	6/30/2018	82.87516	kg/d	103.5008	kg/d	25
Phosphorus, total (as P)	SEAS TDT	6/30/2018	41.41273	kg/d	58.39779	kg/d	41

Nitrogen, total (as N)	SEAS TDT	7/31/2018	414.1646	kg/d	1171.186	kg/d	183
Nitrogen, total (as N)	CUM TOTL	7/31/2018	1104.961	kg/d	2548.132	kg/d	131
Phosphorus, total (as P)	SEAS TDT	7/31/2018	41.41273	kg/d	81.88115	kg/d	98
Phosphorus, total (as P)	CUM TOTL	7/31/2018	82.87516	kg/d	126.9841	kg/d	53
Nitrogen, total (as N)	SEAS TDT	8/31/2018	414.1646	kg/d	1427.267	kg/d	245
Nitrogen, total (as N)	CUM TOTL	8/31/2018	1104.961	kg/d	2804.212	kg/d	154
Nitrogen, ammonia total (as N)	MX MO AV	8/31/2018	6.3	mg/L	6.8	mg/L	8
Nitrogen, ammonia total (as N)	MX MO AV	8/31/2018	1739.683	kg/d	1913.832	kg/d	10
Phosphorus, total (as P)	CUM TOTL	8/31/2018	82.87516	kg/d	150.9645	kg/d	82
Phosphorus, total (as P)	SEAS TDT	8/31/2018	41.41273	kg/d	105.8615	kg/d	156
Enterococci	MO GEOMN	8/31/2018	35	MPN/ 100mL	99	MPN/ 100mL	183
Nitrogen, total (as N)	CUM TOTL	9/30/2018	1104.961	kg/d	3215.482	kg/d	191
Nitrogen, total (as N)	SEAS TDT	9/30/2018	414.1646	kg/d	1838.536	kg/d	344
Nitrogen, ammonia total (as N)	MX MO AV	9/30/2018	1739.683	kg/d	4358.277	kg/d	151
Nitrogen, ammonia total (as N)	MX MO AV	9/30/2018	6.3	mg/L	12.8	mg/L	103
Phosphorus, total (as P)	CUM TOTL	9/30/2018	82.87516	kg/d	174.6964	kg/d	111
Phosphorus, total (as P)	SEAS TDT	9/30/2018	41.41273	kg/d	129.5934	kg/d	213

Enterococci	MO GEOMN	9/30/2018	35	MPN/ 100mL	94	MPN/ 100mL	169
Nitrogen, total (as N)	CUM TOTL	10/31/2018	1104.961	kg/d	3324.077	kg/d	201
Nitrogen, total (as N)	SEAS TDT	10/31/2018	414.1646	kg/d	1947.131	kg/d	370
Phosphorus, total (as P)	CUM TOTL	10/31/2018	82.87516	kg/d	182.5242	kg/d	120
Phosphorus, total (as P)	SEAS TDT	10/31/2018	41.41273	kg/d	137.4212	kg/d	232
Nitrogen, total (as N)	CUM TOTL	11/30/2018	1104.961	kg/d	3421.489	kg/d	210
Phosphorus, total (as P)	CUM TOTL	11/30/2018	82.87516	kg/d	190.7247	kg/d	130
Nitrogen, total (as N)	CUM TOTL	12/31/2018	1104.961	kg/d	3499.146	kg/d	217
Phosphorus, total (as P)	CUM TOTL	12/31/2018	82.87516	kg/d	204.3923	kg/d	147
Enterococci	MO GEOMN	3/31/2019	35	MPN/10 0mL	176	MPN/1 00mL	403
Enterococci	MO GEOMN	6/30/2019	35	MPN/10 0mL	66	MPN/1 00mL	89
Phosphorus, total (as P)	MX WK AV	7/31/2019	3	mg/L	4.2	mg/L	40
Phosphorus, total (as P)	CUM TOTL	7/31/2019	82.87516	kg/d	97.53673	kg/d	18
Phosphorus, total (as P)	SEAS TDT	7/31/2019	41.41273	kg/d	46.59398	kg/d	13
Enterococci	MO GEOMN	7/31/2019	35	MPN/10 0mL	97	MPN/1 00mL	177
Phosphorus, total (as P)	CUM TOTL	8/31/2019	82.87516	kg/d	111.4528	kg/d	34
Phosphorus, total (as P)	SEAS TDT	8/31/2019	41.41273	kg/d	60.51005	kg/d	46
Phosphorus, total (as P)	CUM TOTL	9/30/2019	82.87516	kg/d	121.1443	kg/d	46
Phosphorus,	SEAS TDT	9/30/2019	41.41273	kg/d	70.2016	kg/d	70

total (as P)							
Phosphorus, total (as P)	CUM TOTL	10/31/2019	82.87516	kg/d	129.2206	kg/d	56
Phosphorus, total (as P)	SEAS TDT	10/31/2019	41.41273	kg/d	78.27789	kg/d	89
Phosphorus, total (as P)	CUM TOTL	11/30/2019	82.87516	kg/d	135.3089	kg/d	63
Phosphorus, total (as P)	CUM TOTL	12/31/2019	82.87516	kg/d	147.6097	kg/d	78
Enterococci	MO GEOMN	1/31/2020	35	MPN/100mL	47	MPN/100mL	34
Phosphorus, total (as P)	CUM TOTL	7/31/2020	82.87516	kg/d	92.19396	kg/d	11
Enterococci	MO GEOMN	7/31/2020	35	MPN/100mL	56.4	MPN/100mL	61
Solids, total suspended	MX WK AV	8/31/2020	45	mg/L	75	mg/L	67
Solids, total suspended	MX WK AV	8/31/2020	12244.9	kg/d	13832.2	kg/d	13
Nitrogen, total (as N)	SEAS TDT	8/31/2020	414.1646	kg/d	480.4771	kg/d	16
Phosphorus, total (as P)	CUM TOTL	8/31/2020	82.87516	kg/d	122.6354	kg/d	48
Phosphorus, total (as P)	SEAS TDT	8/31/2020	41.41273	kg/d	61.1313	kg/d	48
Enterococci	MO GEOMN	8/31/2020	35	MPN/100mL	74	MPN/100mL	111
Nitrogen, total (as N)	CUM TOTL	9/30/2020	1104.961	kg/d	1119.374	kg/d	1
Nitrogen, total (as N)	SEAS TDT	9/30/2020	414.1646	kg/d	545.0874	kg/d	32
Phosphorus, total (as P)	SEAS TDT	9/30/2020	41.41273	kg/d	68.33784	kg/d	65
Phosphorus, total (as P)	CUM TOTL	9/30/2020	82.87516	kg/d	129.8419	kg/d	57
Nitrogen, total (as N)	SEAS TDT	10/31/2020	414.1646	kg/d	600.1305	kg/d	45

Nitrogen, total (as N)	CUM TOTL	10/31/2020	1104.961	kg/d	1174.417	kg/d	6
Phosphorus, total (as P)	SEAS TDT	10/31/2020	41.41273	kg/d	71.31985	kg/d	72
Phosphorus, total (as P)	CUM TOTL	10/31/2020	82.87516	kg/d	132.8239	kg/d	60
Nitrogen, total (as N)	CUM TOTL	11/30/2020	1104.961	kg/d	1221.135	kg/d	11
Phosphorus, total (as P)	CUM TOTL	11/30/2020	82.87516	kg/d	138.0424	kg/d	67
Nitrogen, total (as N)	CUM TOTL	12/31/2020	1104.961	kg/d	1278.787	kg/d	16
Phosphorus, total (as P)	CUM TOTL	12/31/2020	82.87516	kg/d	142.267	kg/d	72
Enterococci	MO GEOMN	3/31/2021	35	MPN/ 100mL	53	MPN/ 100mL	51
BOD, 5-day, 20 deg. C	MX WK AV	4/30/2021	45	mg/L	49	mg/L	9
BOD, 5-day, 20 deg. C	MX MO AV	4/30/2021	30	mg/L	40	mg/L	33
BOD, 5-day, 20 deg. C	MX MO AV	4/30/2021	8163.265	kg/d	8571.429	kg/d	5
Solids, total suspended	MX MO AV	4/30/2021	30	mg/L	32	mg/L	7
Enterococci	MO GEOMN	4/30/2021	35	MPN/ 100mL	48	MPN/ 100mL	37
BOD, 5-day, 20 deg. C	MX MO AV	5/31/2021	30	mg/L	31	mg/L	3
Solids, total suspended	MX MO AV	5/31/2021	30	mg/L	31	mg/L	3
Nitrogen, total (as N)	CUM TOTL	5/31/2021	1104.961	kg/d	1188.581	kg/d	8
Nitrogen, ammonia total (as N)	MX MO AV	5/31/2021	6.3	mg/L	7.6	mg/L	21
Phosphorus, total (as P)	CUM TOTL	5/31/2021	82.87516	kg/d	85.73292	kg/d	3

Enterococci	MO GEOMN	5/31/2021	35	MPN/ 100mL	119	MPN/ 100mL	240
Solids, total suspended	MX WK AV	6/30/2021	12244.9	kg/d	14376.42	kg/d	17
Solids, total suspended	MX WK AV	6/30/2021	45	mg/L	55	mg/L	22
Nitrogen, total (as N)	CUM TOTL	6/30/2021	1104.961	kg/d	1377.318	kg/d	25
Nitrogen, ammonia total (as N)	MX MO AV	6/30/2021	6.3	mg/L	7.5	mg/L	19
Phosphorus, total (as P)	MX WK AV	6/30/2021	829.932	kg/d	839.0023	kg/d	1
Phosphorus, total (as P)	CUM TOTL	6/30/2021	82.87516	kg/d	121.0201	kg/d	46
Phosphorus, total (as P)	SEAS TDT	6/30/2021	41.41273	kg/d	70.6986	kg/d	71
Phosphorus, total (as P)	MX WK AV	6/30/2021	3	mg/L	3.4	mg/L	13
Enterococci	MO GEOMN	6/30/2021	35	MPN/ 100mL	41	MPN/ 100mL	17
Solids, total suspended	MX MO AV	7/31/2021	30	mg/L	34	mg/L	13
Nitrogen, total (as N)	SEAS TDT	7/31/2021	414.1646	kg/d	641.6302	kg/d	55
Nitrogen, total (as N)	CUM TOTL	7/31/2021	1104.961	kg/d	1617.122	kg/d	46
Nitrogen, ammonia total (as N)	MX MO AV	7/31/2021	6.3	mg/L	9.7	mg/L	54
Nitrogen, ammonia total (as N)	MX MO AV	7/31/2021	1739.683	kg/d	1877.551	kg/d	8
Phosphorus, total (as P)	SEAS TDT	7/31/2021	41.41273	kg/d	117.1683	kg/d	183
Phosphorus, total (as P)	CUM TOTL	7/31/2021	82.87516	kg/d	167.4898	kg/d	102
Phosphorus,	MX MO AV	7/31/2021	2	mg/L	2.8	mg/L	40

total (as P)							
Phosphorus, total (as P)	MX WK AV	7/31/2021	3	mg/L	3.7	mg/L	23
Enterococci	MO GEOMN	7/31/2021	35	MPN/ 100mL	108	MPN/ 100mL	209

Appendix I.

Table 2. Effluent Limit Violations at Back River Wastewater Treatment Plant, NPDES Permit MD0021555 (January 2017-August 2021)

Parameter Description	Limit Type	Monitoring Period Date	Limit		Reported Concentration		% Excee-dance
Nitrogen, total (as N)	TOTAL	5/31/2017	1488.573	kg/d	3329.977	kg/d	124
Nitrogen, total (as N)	MO TOTAL	5/31/2017	1488.573	kg/d	3329.977	kg/d	124
Nitrogen, total (as N)	MO TOTAL	6/30/2017	1488.573	kg/d	2870.644	kg/d	93
Nitrogen, total (as N)	TOTAL	6/30/2017	1488.573	kg/d	2870.644	kg/d	93
Nitrogen, total (as N)	TOTAL	7/31/2017	1488.573	kg/d	2894.528	kg/d	94
Nitrogen, total (as N)	MO TOTAL	7/31/2017	1488.573	kg/d	2894.528	kg/d	94
Phosphorus, total (as P)	MX WK AV	4/30/2018	149.6599	kg/d	178.2313	kg/d	19
Chlorine, total residual	MAXIMUM	4/30/2018	0.011	mg/L	0.1	mg/L	809
Nitrogen, total (as N)	MO TOTAL	5/31/2018	1488.573	kg/d	1678.497	kg/d	13
Nitrogen, total (as N)	MO TOTAL	7/31/2018	1488.573	kg/d	1546.276	kg/d	4
Nitrogen, total (as N)	MO TOTAL	9/30/2018	1488.573	kg/d	1798.395	kg/d	21
E. coli	MX MO GMN	9/30/2018	126	MPN/ 100mL	146	MPN/ 100mL	16
Phosphorus, total (as P)	MX WK AV	3/31/2019	149.6599	kg/d	212.2449	kg/d	42
Phosphorus, total (as P)	MX MO AV	3/31/2019	99.77324	kg/d	108.8435	kg/d	9

E. coli	MX MO GMN	3/31/2019	126	MPN/ 100m L	242	MPN/ 100m L	92
Phosphorus, total (as P)	MX WK AV	4/30/2019	0.3	mg/L	0.4	mg/L	33
Phosphorus, total (as P)	MX WK AV	4/30/2019	149.6599	kg/d	151.9274	kg/d	2
BOD, 5-day, 20 deg. C	MX WK AV	6/30/2019	7256.236	kg/d	104247.2	kg/d	1337
BOD, 5-day, 20 deg. C	MX MO AV	6/30/2019	4988.662	kg/d	24834.92	kg/d	398
BOD, 5-day, 20 deg. C	MX WK AV	6/30/2019	15	mg/L	233	mg/L	1453
BOD, 5-day, 20 deg. C	MX MO AV	6/30/2019	10	mg/L	56	mg/L	460
Nitrogen, total (as N)	MO TOTAL	10/31/2019	1488.573	kg/d	1837.734	kg/d	23
BOD, 5-day, 20 deg. C	MX WK AV	12/31/2019	15	mg/L	17	mg/L	13
Chlorine, total residual	MAXIMUM	12/31/2019	0.011	mg/L	1.5	mg/L	13536
Nitrogen, total (as N)	MO TOTAL	8/31/2020	1488.573	kg/d	1567.938	kg/d	5
Nitrogen, total (as N)	MO TOTAL	9/30/2020	1488.573	kg/d	1617.019	kg/d	9
Nitrogen, total (as N)	MO TOTAL	10/31/2020	1488.573	kg/d	2122.911	kg/d	43
Solids, total suspended	MX WK AV	12/31/2020	7256.236	kg/d	10296.6	kg/d	42
Phosphorus, total (as P)	MX MO AV	12/31/2020	99.77324	kg/d	135.1474	kg/d	35
Phosphorus, total (as P)	MX WK AV	12/31/2020	0.3	mg/L	0.4	mg/L	33
Phosphorus, total (as P)	MX WK AV	12/31/2020	149.6599	kg/d	322.9025	kg/d	116
Solids, total suspended	MX WK AV	1/31/2021	7256.236	kg/d	7902.948	kg/d	9

Solids, total suspended	MX WK AV	1/31/2021	15	mg/L	16	mg/L	7
Phosphorus, total (as P)	MX MO AV	1/31/2021	99.77324	kg/d	109.2971	kg/d	10
BOD, 5-day, 20 deg. C	MX WK AV	2/28/2021	15	mg/L	35	mg/L	133
BOD, 5-day, 20 deg. C	MX MO AV	2/28/2021	10	mg/L	20	mg/L	100
BOD, 5-day, 20 deg. C	MX MO AV	2/28/2021	4988.662	kg/d	11811.34	kg/d	137
BOD, 5-day, 20 deg. C	MX WK AV	2/28/2021	7256.236	kg/d	22897.05	kg/d	216
Solids, total suspended	MX MO AV	2/28/2021	4988.662	kg/d	24838.1	kg/d	398
Solids, total suspended	MX WK AV	2/28/2021	7256.236	kg/d	46688.89	kg/d	543
Solids, total suspended	MX WK AV	2/28/2021	15	mg/L	70	mg/L	367
Solids, total suspended	MX MO AV	2/28/2021	10	mg/L	40	mg/L	300
Phosphorus, total (as P)	MX MO AV	2/28/2021	0.2	mg/L	0.6	mg/L	200
Phosphorus, total (as P)	MX WK AV	2/28/2021	149.6599	kg/d	756.4626	kg/d	405
Phosphorus, total (as P)	MX WK AV	2/28/2021	0.3	mg/L	1.1	mg/L	267
Phosphorus, total (as P)	MX MO AV	2/28/2021	99.77324	kg/d	350.5669	kg/d	251
Solids, total suspended	MX WK AV	2/28/2021	45	mg/L	52	mg/L	16
BOD, 5-day, 20 deg. C	MX MO AV	3/31/2021	10	mg/L	21	mg/L	110
BOD, 5-day, 20 deg. C	MX WK AV	3/31/2021	15	mg/L	36	mg/L	140
BOD, 5-day, 20 deg. C	MX WK AV	3/31/2021	7256.236	kg/d	22291.61	kg/d	207
BOD, 5-day, 20	MX MO AV	3/31/2021	4988.662	kg/d	11681.18	kg/d	134

deg. C							
Solids, total suspended	MX WK AV	3/31/2021	7256.236	kg/d	53675.74	kg/d	640
Solids, total suspended	MX MO AV	3/31/2021	4988.662	kg/d	24478.46	kg/d	391
Solids, total suspended	MX MO AV	3/31/2021	10	mg/L	43	mg/L	330
Solids, total suspended	MX WK AV	3/31/2021	15	mg/L	89	mg/L	493
Phosphorus, total (as P)	MX MO AV	3/31/2021	99.77324	kg/d	426.3039	kg/d	327
Phosphorus, total (as P)	MX WK AV	3/31/2021	0.3	mg/L	1.5	mg/L	400
Phosphorus, total (as P)	MX WK AV	3/31/2021	149.6599	kg/d	870.7483	kg/d	482
Phosphorus, total (as P)	MX MO AV	3/31/2021	0.2	mg/L	0.8	mg/L	300
Toxicity, Chronic	MAXIMUM	3/31/2021	1.02	tox chronic	1.2	tox chronic	18
Solids, total suspended	MX WK AV	3/31/2021	45	mg/L	64	mg/L	42
Solids, total suspended	MX MO AV	3/31/2021	30	mg/L	36	mg/L	20
BOD, 5-day, 20 deg. C	MX MO AV	4/30/2021	10	mg/L	22	mg/L	120
BOD, 5-day, 20 deg. C	MX WK AV	4/30/2021	7256.236	kg/d	13504.31	kg/d	86
BOD, 5-day, 20 deg. C	MX WK AV	4/30/2021	15	mg/L	28	mg/L	87
BOD, 5-day, 20 deg. C	MX MO AV	4/30/2021	4988.662	kg/d	10047.62	kg/d	101
Solids, total suspended	CUM TOTL	4/30/2021	4919.365	kg/d	5914.303	kg/d	20
Solids, total suspended	MX MO AV	4/30/2021	10	mg/L	41	mg/L	310
Solids, total	MX MO AV	4/30/2021	4988.662	kg/d	18639.46	kg/d	274

suspended							
Solids, total suspended	MX WK AV	4/30/2021	7256.236	kg/d	27314.29	kg/d	276
Solids, total suspended	MX WK AV	4/30/2021	15	mg/L	64	mg/L	327
Phosphorus, total (as P)	CUM TOTL	4/30/2021	98.50216	kg/d	103.2373	kg/d	5
Phosphorus, total (as P)	MX MO AV	4/30/2021	0.2	mg/L	0.9	mg/L	350
Phosphorus, total (as P)	MX WK AV	4/30/2021	149.6599	kg/d	614.5125	kg/d	311
Phosphorus, total (as P)	MX MO AV	4/30/2021	99.77324	kg/d	437.1882	kg/d	338
Phosphorus, total (as P)	MX WK AV	4/30/2021	0.3	mg/L	1.4	mg/L	367
E. coli	MX MO GMN	4/30/2021	126	MPN/ 100m L	152	MPN/ 100m L	21
E. coli	MX MO GMN	4/30/2021	126	MPN/ 100m L	341	MPN/ 100m L	171
Solids, total suspended	CUM TOTL	5/31/2021	4919.365	kg/d	6525.467	kg/d	33
Solids, total suspended	MX MO AV	5/31/2021	10	mg/L	17	mg/L	70
Solids, total suspended	MX WK AV	5/31/2021	15	mg/L	21	mg/L	40
Solids, total suspended	MX WK AV	5/31/2021	7256.236	kg/d	8435.374	kg/d	16
Solids, total suspended	MX MO AV	5/31/2021	4988.662	kg/d	7195.918	kg/d	44
Nitrogen, total (as N)	MO TOTAL	5/31/2021	1488.573	kg/d	2510.07	kg/d	69
Nitrogen, ammonia total (as N)	MX WK AV	5/31/2021	3	mg/L	4.2	mg/L	40
Nitrogen, ammonia total	MX WK AV	5/31/2021	1496.599	kg/d	1658.957	kg/d	11

(as N)							
Nitrogen, ammonia total (as N)	MX MO AV	5/31/2021	2	mg/L	2.7	mg/L	35
Nitrogen, ammonia total (as N)	MX MO AV	5/31/2021	997.7324	kg/d	1111.111	kg/d	11
Phosphorus, total (as P)	MX WK AV	5/31/2021	0.3	mg/L	0.5	mg/L	67
Phosphorus, total (as P)	MX MO AV	5/31/2021	99.77324	kg/d	228.5714	kg/d	129
Phosphorus, total (as P)	MX WK AV	5/31/2021	149.6599	kg/d	191.8367	kg/d	28
Phosphorus, total (as P)	MX MO AV	5/31/2021	0.2	mg/L	0.5	mg/L	150
Phosphorus, total (as P)	CUM TOTL	5/31/2021	98.50216	kg/d	121.5134	kg/d	23
Phosphorus, total (as P)	MO TOTAL	5/31/2021	99.23619	kg/d	219.4325	kg/d	121
Nitrogen, ammonia total (as N)	MX MO AV	5/31/2021	2	mg/L	3.2	mg/L	60
Nitrogen, ammonia total (as N)	MX WK AV	5/31/2021	3	mg/L	4.4	mg/L	47
BOD, 5-day, 20 deg. C	MX MO AV	6/30/2021	4988.662	kg/d	6016.78	kg/d	21
BOD, 5-day, 20 deg. C	MX WK AV	6/30/2021	15	mg/L	25	mg/L	67
BOD, 5-day, 20 deg. C	MX MO AV	6/30/2021	10	mg/L	12	mg/L	20
BOD, 5-day, 20 deg. C	MX WK AV	6/30/2021	7256.236	kg/d	16169.61	kg/d	123
Solids, total suspended	MX WK AV	6/30/2021	7256.236	kg/d	43388.66	kg/d	498
Solids, total suspended	MX MO AV	6/30/2021	4988.662	kg/d	12625.4	kg/d	153
Solids, total	MX WK AV	6/30/2021	15	mg/L	63	mg/L	320

suspended							
Solids, total suspended	MX MO AV	6/30/2021	10	mg/L	21	mg/L	110
Solids, total suspended	CUM TOTL	6/30/2021	4919.365	kg/d	7563.165	kg/d	54
Nitrogen, total (as N)	MO TOTAL	6/30/2021	1488.573	kg/d	3034.67	kg/d	104
Nitrogen, ammonia total (as N)	MX MO AV	6/30/2021	2	mg/L	3.8	mg/L	90
Nitrogen, ammonia total (as N)	MX WK AV	6/30/2021	1496.599	kg/d	1963.265	kg/d	31
Nitrogen, ammonia total (as N)	MX WK AV	6/30/2021	3	mg/L	4.7	mg/L	57
Nitrogen, ammonia total (as N)	MX MO AV	6/30/2021	997.7324	kg/d	1604.535	kg/d	61
Phosphorus, total (as P)	CUM TOTL	6/30/2021	98.50216	kg/d	140.1124	kg/d	42
Phosphorus, total (as P)	MX WK AV	6/30/2021	149.6599	kg/d	890.2494	kg/d	495
Phosphorus, total (as P)	MO TOTAL	6/30/2021	99.23619	kg/d	229.2636	kg/d	131
Phosphorus, total (as P)	MX MO AV	6/30/2021	99.77324	kg/d	305.6689	kg/d	206
Phosphorus, total (as P)	MX MO AV	6/30/2021	0.2	mg/L	0.6	mg/L	200
Phosphorus, total (as P)	MX WK AV	6/30/2021	0.3	mg/L	1.3	mg/L	333
Solids, total suspended	MX WK AV	6/30/2021	45	mg/L	51	mg/L	13
Nitrogen, ammonia total (as N)	MX WK AV	6/30/2021	3	mg/L	5.1	mg/L	70
Nitrogen, ammonia total (as N)	MX MO AV	6/30/2021	2	mg/L	4.3	mg/L	115

Solids, total suspended	CUM TOTL	7/31/2021	4919.365	kg/d	7908.54	kg/d	61
Solids, total suspended	MX MO AV	7/31/2021	10	mg/L	11	mg/L	10
Solids, total suspended	MX WK AV	7/31/2021	15	mg/L	17	mg/L	13
Nitrogen, total (as N)	MO TOTAL	7/31/2021	1488.573	kg/d	1925.588	kg/d	29
Phosphorus, total (as P)	MO TOTAL	7/31/2021	99.23619	kg/d	136.7257	kg/d	38
Phosphorus, total (as P)	CUM TOTL	7/31/2021	98.50216	kg/d	151.5	kg/d	54
Phosphorus, total (as P)	MX WK AV	7/31/2021	149.6599	kg/d	222.6757	kg/d	49
Phosphorus, total (as P)	MX MO AV	7/31/2021	0.2	mg/L	0.4	mg/L	100
Phosphorus, total (as P)	MX MO AV	7/31/2021	99.77324	kg/d	135.1474	kg/d	35
Phosphorus, total (as P)	MX WK AV	7/31/2021	0.3	mg/L	0.6	mg/L	100
Solids, total suspended	MX WK AV	7/31/2021	45	mg/L	49	mg/L	9

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BLUE WATER BALTIMORE, INC. 2631 Sisson Street Baltimore, MD 21211 Plaintiffs, v. **MAYOR & CITY COUNCIL OF BALTIMORE** City Hall, 100 N. Holliday Street Baltimore, Maryland 21202 Defendants.	: : : : : : : : : : : : :	CIVIL ACTION - LAW No.:_____

COMPLAINT

And now the Plaintiff, Blue Water Baltimore, Inc., by and through its attorneys, Chesapeake Legal Alliance and Barley Snyder, files this Complaint alleging the following:

STATEMENT OF THE CASE

1. This is a citizen suit for declaratory and injunctive relief, the assessment of civil penalties, and other appropriate relief against the Mayor and City Council of Baltimore ("Defendants" or "Baltimore City") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq*. (hereafter the Clean Water Act ("CWA")).

2. These violations occurred and are occurring at the Patapsco Wastewater Treatment Plant ("Patapsco WWTP") and the Back River Wastewater Treatment Plant ("Back River WWTP") (collectively, "Facilities"). The Patapsco Wastewater Treatment Plant is located

at 3501 Asiatic Ave, Baltimore, MD 21226. The Back River WWTP is located at 8201 Eastern Ave, Baltimore, MD 21224. Both Facilities are owned and operated by Defendants.

3. As detailed below, Defendants have discharged and continue to discharge pollutants into waters of the United States in violation of sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342, and the conditions and limitations of National Pollutant Discharge Elimination System ("NPDES") Permit No. MD0021601 (State Permit 15-DP-0580) ("Patapsco Permit") and NPDES Permit No. MD0021555 (State Permit 15-DP-0581) ("Back River Permit"), issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342.

4. Defendants have demonstrated an unwillingness and/or inability to comply with the terms of their NPDES permits as well as federal and state law.

JURISDICTION AND VENUE

5. This Court has original subject matter jurisdiction over this action pursuant to 33 U.S.C. § 1365(a), and 28 U.S.C. § 1331.

6. This Court has supplemental jurisdiction over state law claims included in this Complaint pursuant to 28 U.S.C. § 1367.

7. Pursuant to 33 U.S.C. § 1365(c), venue is correct because the Clean Water Act (CWA) violations alleged in this Complaint occurred or may occur in this District.

8. Pursuant to the CWA, 33 U.S.C. § 1365(b)(1)(A) (requiring 60 days notice), Blue Water Baltimore. ("Plaintiff") gave notice on October 5, 2021, which is more than 60 days prior to commencing this action, to all required parties including: 1) the Defendants; 2) the Maryland Department of the Environment ("the Department"); 3) the United States Environmental Protection Agency (EPA); and 4) the State of Maryland.

9. Neither EPA nor the State of Maryland has commenced or is diligently prosecuting a civil or criminal action against Defendants in a court of the United States or the State of Maryland, or pursuing an administrative penalty action, to require compliance with the laws, rules, regulations, permits, standards, or limitations at issue in this case.

10. As explained below, Defendants are in violation of effluent standards and limitations set forth in their Permits and are not otherwise complying with the terms and conditions of the Permits. Therefore, the violations alleged herein will continue until this Court enjoins Defendants from discharging in violation of the Permits and orders Defendants to address and remedy the underlying causes of the violations.

PARTIES

11. Plaintiff Blue Water Baltimore is a 501(c)(3) nonprofit organization formed in 2010. It is dedicated to protecting clean water in the Baltimore, Maryland, area. Blue Water Baltimore is headquartered at 2631 Sisson Street, Baltimore, Maryland. Its mission is to protect and restore the Baltimore Harbor, the greater Patapsco and Back Rivers, and their tributaries through enforcement, fieldwork, and citizen action on behalf of its members in order to make these waterways suitable for recreation (including fishing and swimming), to improve public health, and to improve the health of the aquatic ecosystems. Baltimore Harbor Waterkeeper, a program of Blue Water Baltimore, is responsible for protecting the Patapsco River and Back River watersheds, including all of the neighborhood streams and rivers that discharge into the Patapsco and Back Rivers.

12. Blue Water Baltimore has over 1000 members, over 800 of whom live in Baltimore City and Baltimore County, surrounded by the Patapsco and Back Rivers, which drain to the Chesapeake Bay.

Blue Water Baltimore supports its members by utilizing the CWA and other environmental laws to stop pollution that threatens public health, impairs water quality, damages ecosystems, and negatively impacts the ability of its members to use and enjoy the waterways of Baltimore. Blue Water Baltimore's members include individuals who participate in and enjoy many recreational activities in and around the Patapsco and Back Rivers and the Chesapeake Bay, including fishing, boating, kayaking, and enjoyment of their aesthetic qualities. *See* Declarations of Alice Volpitta, Desiree Greaver, Sara Bundy, and Rodette Jones. Attached as Exhibit 1 and incorporated herein.

13. Blue Water Baltimore's members are harmed by the violations alleged in this Complaint. Pollution in Patapsco and Back Rivers impairs water quality, threatens public health, and harms river habitats and aquatic ecosystems. Defendants' violations of the CWA have resulted in excess pollution which impairs the water quality and contributes to algae blooms, fish kills, and unsafe swimming conditions in the Patapsco and Back Rivers and have diminished Blue Water Baltimore's members' use and enjoyment of these waters by making it less likely that they will continue to enjoy recreating on and around them in the future. *See* Declarations of Alice Volpitta, Desiree Greaver, Sara Bundy, and Rodette Jones. Exh. 1.

14. A favorable decision in this matter would compel Baltimore City to comply with applicable laws and ensure the operation of the Facilities do not continue to negatively impact the water quality in the Back River, Patapsco River, and Chesapeake Bay and would lead to improvements in water quality and redress the concerns of Blue Water Baltimore's members.

15. The interests that Plaintiff seeks to protect are germane to its organizational purposes.

16. Neither the claims asserted nor the relief requested requires the participation of Plaintiff's individual members in this action.

17. At all relevant times, Plaintiff was and is a "person" as that term is defined by the CWA, 33 U.S.C. § 1362(5).

18. Defendants Baltimore Mayor and members of the Baltimore City Council are the executive and legislative components of the Baltimore City government and are the permittees and the responsible parties on the Permits. Their address is City Hall, 100 N. Holliday Street, Baltimore, MD 21202.

19. Baltimore City owns and operates the Patapsco WWTP. The Facility treats wastewater from the Baltimore metropolitan area, including Baltimore City, Baltimore County, Anne Arundel County, and Howard County.

20. Baltimore City also owns and operates the Back River WWTP. The Facility treats wastewater from Baltimore City and Baltimore County.

21. The Defendants are "persons" within the meaning of the CWA, 33 U.S.C. § 1362(5).

STATUTORY AND REGULATORY FRAMEWORK

22. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant by any person" into waters of the United States except in compliance with the terms of a permit, such as an NPDES permit issued by EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

23. Title 9 of the Maryland Environment Code and its accompanying regulations detail Maryland's NPDES permit program.

24. The term "discharge of pollutants" is defined in section 502(12) of the CWA, 33 U.S.C. § 1362(12), to mean "any addition of any pollutant to navigable waters from any point source…"

25. The term "pollutant" is defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6) to mean "dredged spoil, solid waste. . . sewage. . . sewage sludge. . . chemical wastes, biological materials. . . . and industrial, municipal . . . waste discharged into water."

26. The term "point source" is defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14), to mean "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel…from which pollutants are or may be discharged."

27. The term "navigable waters" is defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7) to mean "the waters of the United States, including the territorial seas."

28. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the EPA may issue NPDES permits to "persons" that authorize the discharge of any pollutant into navigable waters, but only in compliance with section 301 of the Act, 33 U.S.C. § 1311, and such other conditions as EPA determines are necessary to carry out the provisions of the Act.

29. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that a State may establish its own permit program and, after receiving approval of its program by the EPA, may issue NPDES permits. Under COMAR 26.08.04.07, the State of Maryland established its own NPDES permit program and received EPA approval of its program in 1974. The Department issues NPDES permits under Title 9 of the Maryland Code of the Environment.

30. Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), allows citizens to bring suit against "any person…alleged to be in violation" of an "effluent standard or limitation"

established under the CWA or "an order issued by…a State with respect to such a standard or limitation."

31. Section 505(f)(7), 33 U.S.C. § 1365(f)(7) defines "effluent standard or limitation" as "a permit or condition of a permit issued under section 402 [33 U.S.C. § 1342]," the NPDES Permit is an "effluent standard or limitation" as defined by section 505(f)(7) of the CWA, 33 U.S.C. § 1366(f)(7).

32. 40 C.F.R. § 122.41 states that permittees "must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action…" 40 C.F.R. § 122.41(a).

33. In an action brought under Section 505(a) of the CWA, 33 U.S.C. § 1365(a), the district court has jurisdiction to order Defendants to comply with the CWA and to assess civil penalties.

34. Under Section 505(d) of the CWA, 33 U.S.C. § 1365(d), the court "may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such an award is appropriate."

35. Section 309(d) of the Act, 33 U.S.C. § 1319(d), provides that any person who violates, *inter alia*, section 301 of the Act, 33 U.S.C. § 1311, or who violates any condition or limitation of an NPDES permit issued pursuant to section 402 of the Act, 33 U.S.C. § 1342, shall be subject to a civil penalty.

36. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. §3701, any person who violates sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, shall be subject to a civil penalty up to $56,460 per day per violation occurring on or after January 13,

2009. *See also* 40 C.F.R. § 19.4 for violations that occurred after November 2, 2015, where penalties are assessed after December 23, 2020.

FACTUAL BACKGROUND

The Facilities: Patapsco WWTP

37. The Patapsco WWTP Permit is effective October 1, 2017, to September 30, 2022, pursuant to § 402 of the CWA, 33 U.S.C. § 1342(b).

38. The Patapsco Permit authorizes Defendants to discharge pollutants from treated wastewater to the Patapsco River in accordance with certain effluent limitations, monitoring requirements, and other conditions set forth in the Permit.

39. The Patapsco Permit authorizes Defendants to discharge pollutants via Outfall 001A into the Patapsco River, which flows to the Chesapeake Bay.

40. Outfall 001A is a point source under the Clean Water Act.

41. The Patapsco River is a tidal estuary located on the western shore of the Chesapeake Bay that includes the Baltimore Harbor, Curtis Creek, and Bear Creek. The Patapsco WWTP discharges into the Patapsco River Mesohaline sub-watershed 7.5 miles from the River's confluence with the Chesapeake Bay.

42. The Patapsco River is designated Use II waters for support of estuarine and marine aquatic life and shellfish harvesting.

43. The Patapsco River is a navigable water of the United States within the meaning of 33 U.S.C. § 1362(7).

44. The Department has listed the Patapsco River under section 303(d) of the CWA as impaired for the following pollutants: total phosphorus, total nitrogen, total suspended solids, Enterococcus, toxics (polychlorinated biphenyls, or PCBs), chlordane, impacts to biological

communities, and debris/Floatables.

45. The EPA has approved the Department's Total Maximum Daily Loads ("TMDL") for the Patapsco River Mesohaline for nitrogen (2007), phosphorus (2007), and trash and debris (2016). In addition, TMDLs have been established for the Baltimore Harbor for chlordane (2001) and PCBs (2012). The Patapsco River is also part of the Chesapeake Bay TMDL, established in 2010, which limits total nitrogen, total phosphorus, and TSS entering the Chesapeake Bay. Maryland's Watershed Implementation Plan for the Bay TMDL recognizes the Patapsco WWTP as having a significant impact on the state's overall nutrient load to the Chesapeake Bay.

46. Excessive nutrient pollution to the Patapsco River and the Chesapeake Bay can result in harmful algae blooms, fish kills, and other negative environmental and health impacts.

The Facilities: Back River Wastewater Treatment Plant

47. The Back River WWTP Permit is effective May 1, 2018 to April 30, 2023, pursuant to § 402 of the CWA, 33 U.S.C. § 1342(b).

48. The Back River Permit authorizes Defendants to discharge pollutants from treated wastewater to the Back River in accordance with certain effluent limitations, monitoring requirements, and other conditions set forth in the Permit.

49. The Back River Permit authorizes Defendants to discharge pollutants via Outfall 001A into the Back River, which flows into the Chesapeake Bay and via Outfall 002A into High Head Lake at the Sparrows Point Trade Point Property, and from there, is pumped into existing outfalls to Bear Creek, which flows to the Chesapeake Bay.

50. Outfall 001A and Outfall 002A are point sources under the Clean Water Act.

51. The Back River is located on the western shore of the Chesapeake Bay. The Back River WWTP discharges into the Back River 6.3 miles from its confluence with the Chesapeake

Bay.

52. The Back River is designated Use II waters for support of estuarine and marine aquatic life and shellfish harvesting.

53. The Back River is a navigable water of the United States within the meaning of 33 U.S.C. § 1362(7).

54. The Department has listed the Back River under section 303(d) of the CWA as impaired for the following pollutants: PCBs in sediment and fish tissue, sediments, chlordane, nitrogen and phosphorus, chlorides, and sulfates.

55. The EPA has approved the Department's TMDLs for the Patapsco River Mesohaline for nutrients (established in 2005), chlordane (1999), zinc (2004), PCBs (2005), and E. coli (2007). The TMDLs for nutrients and PCBs for the Baltimore Harbor (established in 2007 and 2012, respectively) also apply to the Back River. In addition, the Back River is part of the Chesapeake Bay TMDL limits for total nitrogen, total phosphorus, and TSS. Maryland's Watershed Implementation Plan for the Bay TMDL recognizes the Back River WWTP as having a significant impact on the state's overall nutrient load to the Chesapeake Bay.

56. Excessive nutrient pollution to the Back River and the Chesapeake Bay can result in harmful algae blooms, fish kills, and other negative environmental and health impacts.

The Permits: Patapsco WWTP

57. The Patapsco Permit establishes, among others, the following effluent limits:

a. BOD: 18,000 lb/d monthly average loading rate and 27,000 lb/d weekly average loading rate.

b. TSS: 18,000 lb/d monthly average loading rate and 27,000 lb/d weekly average loading rate.

c. Ammonia (As N): 3,836 lb/d monthly average loading rate from May 1 through October 31 each year.

d. Total Phosphorus: 33,330 lb total May 1 through October 31, and 66,700 lb/yr.

e. Total Nitrogen: 333,330 lb total May 1 through October 31, and 889,300 lb/yr.

f. Enterococci: 35 MPN/100 ml monthly geometric mean.

g. Total Residual Chlorine: 0.018 mg/l maximum.

h. pH: minimum of 6.5 and maximum of 8.5.

i. Dissolved oxygen: 5.0 mg/l minimum year-round, with minimum 6.0 mg/l weekly average February 1 through May 31.

58. Defendants are required to submit timely and accurate Discharge Monitoring Reports ("DMRs") verifying compliance with the Patapsco Permit's effluent limits. (General Condition III.A.2.)

59. The Patapsco Permit contains numerous Special and General Conditions that establish additional enforceable requirements on the Patapsco WWTP's operation.

60. The Patapsco Permit Special Conditions pertain to, among other things: PCBs testing and reporting (Special Conditions II.B.1 and II.F.4), toxic chemical testing and reporting (Special Condition F), special reporting requirements including Wastewater Capacity Management Plans (Special Condition II.B.2), and mitigation of Fats, Oils, and Grease ("FOGs") (Special Condition M).

61. The Patapsco Permit General Conditions pertain to, among other things: maintaining the Patapsco WWTP in efficient and good working order (General Condition III.B.3) and minimizing and preventing adverse impacts to waters of the state or to human health (General Condition III.B.4).

62. The Patapsco Permit references civil and criminal penalties for violations of Permit Conditions (Civil and Criminal Penalties IV).

The Permits: Back River WWTP

63. The Back River Permit establishes, among others, the following effluent limits for Outfall 001A:

a. Biological Oxygen Demand (BOD): 11,000 lb/d monthly average loading rate and 16,000 lb/d weekly average loading rate.

b. TSS: 11,000 lb/d monthly average loading rate and 16,000 lb/d weekly average loading rate, with an annual maximum of 3,959,228 lb.

c. Ammonia (As N): 2,200 lb/d monthly average loading rate and 3,300 lb/d weekly average loading rate from May 1 through October 31 each year, and 5,529 lb/d monthly average loading rate the remainder of the year. Total nitrogen is limited to 99,782 lb/m from May 1 to October 31, with an annual maximum of 1,582,055 lb.

d. Total Phosphorus: 220 lb/d monthly average loading rate and 330 lb/d weekly average loading rate, with a limit of 6,652 lb/m from May 1 through October 31, and total limit of 79,277 lb.

e. E. coli: 126 MPN/100 ml monthly geometric mean.

f. Total Residual Chlorine: 0.011 mg/l.

g. pH: minimum of 6.5 and maximum of 8.5.

h. Dissolved oxygen: 5.0 mg/l minimum year-round, with minimum 6.0 mg/l weekly average February 1 through May 31.

i. WET Acute Toxicity: TUa<1.00.

j. WET Chronic Toxicity: TUc<1.02.

64. The Back River Permit establishes, among others, the following effluent limits for Outfall 002A:

a. Biological Oxygen Demand (BOD): 8,340 lb/d monthly average loading rate and 12,520 lb/d weekly average loading rate from May 1 through October 31, and 12,520 lb/d monthly average loading rate and 18,770 lb/d weekly average loading rate for the remainder of the year.

b. TSS: 12,520 lb/d monthly average loading rate and 18,770 lb/d weekly average loading rate, with an annual maximum of 4,589,026 lb.

c. Ammonia (As N): 830 lb/d monthly average loading rate and 1,250 lb/d weekly average loading rate from May 1 through October 31 each year, and 2,120 lb/d monthly average loading rate the remainder of the year. Total nitrogen is limited to 230,294 from May 1 to October 31, with an annual maximum of 610,748 lb.

d. Total Phosphorus: 83 lb/d monthly average loading rate and 125 lb/d weekly average loading rate, with a limit of 15,353 lb total from May 1 through October 31, and an overall limit of 30,363 lb/y.

e. E. coli: 126 MPN/100 ml monthly geometric mean.

f. pH: minimum of 6.5 and maximum of 8.5.

g. Dissolved oxygen: 5.0 mg/l minimum year-round, with minimum 6.0 mg/l weekly average February 1 through May 31.

65. The entire Back River WWTP (Outfalls 001A and 002A combined, are subject to annual load limits:

a. Total Nitrogen: 2,192,800 lb/y.

b. Total Phosphorus: 109,600 lb/y.

c. TSS: 8,548,254 lb/y.

66. Defendants are required to submit timely and accurate DMRs verifying compliance with the Back River Permit's effluent limits. (General Condition III.A.2).

67. The Back River Permit contains numerous Special and General Conditions that establish additional enforceable requirements on the Back River WWTP's operation.

68. The Back River Permit Special Conditions pertain to, among other things: PCBs testing and reporting (Special Conditions II.B) and the proper execution of a biomonitoring program (Special Condition D).

69. The Back River Permit General Conditions pertain to, among other things: required notifications of any permit noncompliance (General Condition III.B.1), requirements to provide information to regulators upon request (General Condition III.B.11), maintaining the Back River WWTP in efficient and good working order (General Condition III.B.3), and minimizing and preventing adverse impacts to waters of the state or to human health (General Condition III.B.4).

70. The Back River Permit references civil and criminal penalties for violations of Permit Conditions (General Conditions C.15 and C.16).

CAUSES OF ACTION

Counts 1-15

Count 1: Failure to Comply with the Patapsco Permit's Effluent Limits

71. Plaintiff realleges and incorporates by reference all preceding paragraphs.

72. The Patapsco Permit requires compliance with state water pollution abatement statutes in particular Title 9, Subtitle 3 of the Maryland Environment Code. Permit II.C.13. Section 9-342 states that any person who violates a permit condition, including effluent limits, is

subject to civil and administrative enforcement action, including, but not limited to, injunctive relief and monetary penalties. In addition, each day a violation occurs is a separate violation of the permit and state law.

73. For the Patapsco WWTP, DMR data from January 2017 - September 2021 show that Defendants violated the Patapsco Permit limits described above in Paragraph 57 at least 133 times, for a total of 899 exceedance days, for various pollutants including nitrogen, phosphorus, TSS, enterococci, and BOD.

74. Defendants have violated and are violating sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and Md. Code Ann., Envir. §9-322 which prohibit the "discharge" of pollutants except in compliance with conditions of an NPDES permit.

75. Each day during the last five years that Defendants exceeded effluent limits and continues to exceed is a separate violation of the CWA. Defendants are subject to civil penalties under CWA section 309(d), 33 U.S.C. § 1319(d), for which a penalty of up to $37,500 per day for each violation occurring through November 2, 2015, and $56,460 per day for each violation thereafter. 40 C.F.R. § 19.4.

Count 2: Failure to Comply with Patapsco Permit Special Condition II.B.1 and II.F.4 Requiring Adequate Testing and Reporting of PCBs

76. Plaintiff realleges and incorporates by reference all preceding paragraphs.

77. Special Condition II.B.1 of the Patapsco Permit requires Defendants to monitor PCBs year-round by reporting a 24-hour composite measure from a sample taken quarterly. Monitoring for PCBs and all other toxic chemicals monitoring required by the Patapsco Permit is required to be performed in accordance with protocols specified by the Department that include specifications of "analytical methodology, detection levels, holding times, preservation methods, sample types and reporting.

78. Based on information and belief, Defendants have not complied with the requirements of Special Condition II.B.1 described above. For example, Department inspections reveal that rinsate and equipment blanks have been collected incorrectly for the purposes of the PCB TMDL that applies to the Patapsco WWTP. Furthermore, Defendants were inaccurately reporting the results of the testing. Both total PCBs and individually measured congeners must be reported under Special Condition F(4) of the Patapsco Permit. In addition, Defendants neglected to report a second quarterly sample taken on January 12, 2021 and failed to report twelve PCB congeners that are specified in the Department's "Reporting Requirements for PCBs (PCB Congeners by EPA method 1668 A or C Rev 11/9/2017)" guidance document.

79. Defendants have continually failed to satisfy the requirements of Special Condition II.B.1, which is enforceable pursuant to the CWA, 33 U.S.C. § 1365(a)(1)(A).

Count 3: Failure to Comply with Patapsco Permit Special Condition II.F Requiring Toxic Chemical Testing

80. Plaintiff realleges and incorporates by reference all preceding paragraphs.

81. Special Condition II.F of the Patapsco Permit requires toxic chemical testing concurrently with the biomonitoring program required elsewhere in the permit. Defendants must test effluent from the Patapsco WWTP for all chemicals identified in the Department's Toxic Pollutant Monitoring Protocol and Reporting Requirements for Toxic Chemical Testing Analytical Data and must perform the tests in accordance with 40 CFR Part 136 and the Department-approved toxic chemical testing plan.

82. Based on information and belief, Defendants' inadequate testing and reporting of toxic chemicals has been an ongoing problem at the Facility. The Department's May 2021 inspection of the Patapsco Facility found that Defendants failed to meet the sampling and

analytical requirements for the 2021 Toxic Chemical testing and failed to properly collect rinsate and equipment blanks for toxic chemical testing.

83. In addition, a routine inspection of the Patapsco WWTP by the Department on September 26, 2018, found that Defendants 1) did not quantify acrolein and cyanide to the level specified in the Permit, 2) used incorrect sampling methods for phenols, and 3) that the Department had "additional concerns regarding toxic chemical testing that will be resolved as a later date after further investigations and discussions with the permittee."

84. Defendants have continually failed to meet Special Condition II.F, which is enforceable pursuant to the CWA, 33 U.S.C. § 1365(a)(1)(A).

Count 4: Failure to Comply with Patapsco Permit Special Condition II.B.2 Requiring Wastewater Capacity Management Plans

85. Plaintiff realleges and incorporates by reference all preceding paragraphs.

86. Wastewater Capacity Management Plans ("WCMP") are required where a plant has a three-year average flow at or above 80% of its design capacity. Special Condition II.B.2 requires the Patapsco WWTP to submit a Wastewater Capacity Management Plan ("WCMP") within 90 days of the effective date of the permit.

87. A three-year update of the WCMP for the period ending December 2020 is required.

88. The most recent WCMP for Patapsco was the 2017 Wastewater Capacity Management Plan, submitted February 9, 2019. Defendants have not submitted an updated WCMP for the period of 2017-2020.

89. Based on information and belief, Defendants have not complied with Special Permit Condition II.B.2 by failing to submit a three-year updated WCMP for the period ending

December 2020 to the Department. This constitutes a continuous enforceable violation of the CWA, 33 U.S.C. § 1365(a)(1)(A).

Count 5: Failure to Comply with Patapsco Permit Special Condition II.M Requiring Mitigation of FOGs

90. Plaintiff realleges and incorporates by reference all preceding paragraphs.

91. Special Condition II.M requires the Patapsco WWTP to develop and implement a FOG mitigation plan that includes "a description of the measures that will be taken to achieve the maximum practicable reduction of fats oils and grease and implementation schedule." The plan is required to include "[r]egular maintenance and repair of the skimmers, as required in the Department's Consent Order (CO-16-2405)."

92. The Patapsco Permit requires Defendants to submit annual updates to the Department on all measures taken to comply with the FOG mitigation plan.

93. Defendants have not conducted required maintenance and repair of the systems that control FOGs. The Department's May 6, 2021 inspection of the Facility found that the current mitigation plan is not accurate or consistent with current Facility operations. The inspection noted that 1) only five of 18 primary settling tanks were operational; 2) planned replacement or refurbishment of the actuators, flight plant brackets, and scum troughs had not yet begun, and 3) most of the problems identified in the mitigation plan had not been corrected.

94. Defendants did not submit the annual update for 2018, 2019, and 2020 on measures taken at the Patapsco WWTP to comply with the FOG mitigation plan.

95. Based on information and belief, Defendants have not complied with Special Permit Condition II.M by failing to maintain FOG control systems and by failing to submit annual updates to the Department. This constitutes a continuous enforceable violation of the CWA, 33 U.S.C. § 1365(a)(1)(A).

Count 6: Failure to Comply with Patapsco Permit General Condition III.A Requiring Monitoring and Reporting

96. Plaintiff realleges and incorporates by reference all preceding paragraphs.

97. General Condition A of the Patapsco Permit contains numerous provisions about the testing and reporting of samples from the Patapsco WWTP, including the requirements that Defendants take representative samples, submit chain-of-custody forms with toxic chemical samples, and use sampling and analytical methods that conform to the procedures described in 40 C.F.R. Part 136. Defendants have consistently handled samples from the Patapsco WWTP in a manner that does not comply with these requirements. The Defendants have repeatedly processed samples outside of the specified holding time, lost samples, and did not take required samples, including but not limited to:

- December 8, 22, and 23, 2017: BOD5 samples were analyzed outside of the specified holding time, resulting in no reportable results.
- December 25, 2017: samples collected for orthophosphate were analyzed beyond the specified holding time, resulting in no reportable results.
- September 26, 2018: a routine Department inspection found deficiencies in sample handling and in the reporting of toxic chemical testing to the Department.
- September 22, 2020: shipping errors caused cyanide samples to arrive late at the testing laboratory, resulting in holding times and temperature criteria being exceeded.
- September 24, 2020: no samples were taken because of a possible covid exposure.
- November 22, 2020: deficiencies occurred in the BOD sample chain of command and the sample was processed outside of the specified holding time.
- December 11, 2020: the TSS sample was analyzed beyond the specified holding time.
- December 12, 2020: the TSS sample was analyzed beyond the specified holding time.
- December 21, 2020: the orthophosphorus sample was lost and a new sample was required to be collected on December 24.

- January 25, 2021: the Facility's phosphorous sample, required three times per month, was missed.

- January 25, 2021: the Facility's TSS sample was run outside of the specified holding time.

- January 25, 2021: staff failed to filter the orthophosphorus sample within 15 minutes of collection as is required under 40 C.F.R. Part 136.

- March 12, 2021: the testing laboratory discarded samples for BOD and TSS.

98. As set forth in Paragraph 97, above, Defendants have continually failed to meet General Condition III.A, which is enforceable pursuant to the CWA, 33 U.S.C. § 1365(a)(1)(A).

Count 7: Failure to Comply with Patapsco Permit General Condition III.B.3 Regarding Facility Operations

99. Plaintiff realleges and incorporates by reference all preceding paragraphs.

100. General Condition III.B.3 of the Patapsco Permit states that "all waste collection, control, treatment and disposal facilities shall be . . . operated efficiently to minimize upsets and discharges of excessive pollutants."

101. Furthermore, General Condition III.B.3 states that "[t]he permittee shall provide an adequate operating staff qualified to carry out operation, maintenance and testing functions required to ensure compliance with this permit. Superintendents and operators must be certified by the Board of Waterworks and Waste Systems Operators" in accordance with Maryland law.

102. As set forth elsewhere in this Complaint, Defendants have not maintained the Patapsco WWTP in good working order and are not operating the Facility efficiently, as demonstrated by the repeated effluent limit exceedances and violations and their failure to comply with a number of permit conditions. There have been multiple instances where Defendants failed to operate the Patapsco WWTP's treatment, control, and monitoring systems efficiently and in good working order. In addition, there have been repeated instances of

excessive discharges of pollution, failure to maintain FOG removal systems, and errors in sampling procedures.

103. These chronic failures, effluent limits exceedances, and failure to comply with other permit conditions detailed above indicate systemic operation and maintenance failure by Defendants at the Patapsco WWTP.

104. The last five years of inspections at the Patapsco WWTP, and other data and documentation, indicates that the Patapsco WWTP is continually failing to operate efficiently to minimize upsets and discharges of excessive pollutants in violation of Permit General Condition B.3. This constitutes an enforceable violation of the CWA, 33 U.S.C. § 1365(a)(1)(A).

Count 8: Failure to Comply with Patapsco Permit General Condition III.B.4 Requiring Minimization of Impacts

105. Plaintiff realleges and incorporates by reference all preceding paragraphs.

106. General Condition III.B.4. states that the "permittee shall take all reasonable steps to minimize any adverse impact to waters of this State, human health or the environment resulting from noncompliance with any effluent limitations specified in this permit, and must perform accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge."

107. Defendants have violated General Condition III.B.4. of the Patapsco Permit by failing to take all reasonable steps to minimize or prevent adverse impact to waters of the State or to human health from the Patapsco WWTP. Repeated and continuous effluent limit exceedances have been documented by Defendants' own DMRs. Excessive FOG discharges have been previously cited by the Department through CO-16-2405 but the Patapsco WWTP has yet to remedy the issues and maintain their systems in good working order.

108. Defendants have continually failed to meet General Condition III.B.4,. which is enforceable pursuant to the CWA, 33 U.S.C. § 1365(a)(1)(A).

Count 9: Failure to Comply with the Back River Permit's Effluent Limits

109. Plaintiff realleges and incorporates by reference all preceding paragraphs.

110. The Back River Permit requires compliance with state water pollution abatement statutes in particular Title 9, Subtitle 3 of the Maryland Environment Code. Permit II.C.13. Section 9-342 states that any person who violates a permit condition, including effluent limits, is subject to civil and administrative enforcement action, including but not limited to injunctive relief and monetary penalties. In addition, each day a violation occurs is a separate violation of the permit and state law.

111. For the Back River WWTP, DMR data from January 2017 - September 2021 show the Back River Permit limits, described above in Paragraphs 63-65 above were violated at least 138 times, for a total of 1,611 exceedance days, for various pollutants including nitrogen, phosphorus, TSS, E. coli, and BOD.

112. Defendants have violated and are violating Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and Md. Code Ann., Envir. §9-322 which prohibit the "discharge" of pollutants except in compliance with conditions of an NPDES permit.

113. Each day during the last five years that Defendants exceeded effluent limits and continues to exceed is a separate violation of the CWA. Defendants are subject to civil penalties under CWA section 309(d), 33 U.S.C. § 1319(d), for which a penalty of up to $37,500 per day for each violation occurring through November 2, 2015, and $56,460 per day for each violation thereafter. 40 C.F.R. § 19.4.

Count 10: Failure to Comply with Back River Permit Special Condition II.B and II.F. Requiring Adequate Testing and Reporting of PCBs

114. Plaintiff realleges and incorporates by reference all preceding paragraphs.

115. Back River Permit Special Condition II.B requires Defendants to monitor PCBs year-round by reporting a 24-hour composite measure from a sample taken quarterly. Monitoring for all toxic chemicals, including PCBs, mandated by the Back River Permit that must be performed in accordance with protocols specified by the Department that include specifications of "analytical methodology, detection levels, holding times, preservation methods, sample types and reporting."

116. Back River Permit Special Condition II.F. 4 requires Defendants to perform toxic chemical testing to be performed in accordance with 40 C.F.R. Part 136, and requires Defendants to report both total PCBs and individual PCB congeners.

117. Based on information and belief, Defendants have not complied with the requirements of Special Conditions II.B and II.F described in Paragraphs 115 and 116. For example, the Department's June 2021 inspection of the Back River WWTP found that rinsate blanks were regularly contaminated during testing in 2019 and 2020, calling into question the validity of the testing performed.

118. Furthermore, the PCB results from the Back River WWTP are not sufficient to meet permit requirements. Laboratory reports did not contain concentration information for 12 PCB congeners that Defendants are required to report by the Back River Permit. In addition, the laboratory reports did not include results from the method blanks that are needed to determine if the Defendants satisfied required testing criteria.

119. Defendants have continually failed to satisfy the requirements of Special Conditions II.B and II.F, which are enforceable pursuant to the CWA, 33 U.S.C. § 1365(a)(1)(A).

Count 11: Failure to Comply with Back River Permit Special Condition II.D Requiring a Biomonitoring Program

120. Plaintiff realleges and incorporates by reference all preceding paragraphs.

121. Special Condition II.D of the Back River Permit requires Defendants to conduct quarterly testing for chronic toxicity at the Back River WWTP. When two consecutive toxicity tests show acute or chronic toxicity, Defendants must perform a repeat test within 60 days to confirm the findings.

122. Whole Effluent Toxicity ("WET") on February 25, 2021 and May 25, 2021 indicated that effluent from the Back River WWTP was chronically toxic to *Americamysis bahia*. Defendants did not perform the required confirmation test.

123. In addition, at the time of the Department's June 2021 inspection of the Back River WWTP, results from the annual toxic chemical testing—conducted in February 2021 and due to the Department in April 20201—had not yet been received by the Department.

124. Based on information and belief, Defendants have not complied with the requirements of Special Permit Condition II.D by their failure to conduct required confirmation testing and failing to report results of annual toxics testing to the Department. This constitutes a continuous enforceable violation of the CWA, 33 U.S.C. § 1365(a)(1)(A).

Count 12: Failure to Comply with Back River Permit General Condition III.B.1 Requiring a Notifications of Permit Noncompliance

125. Plaintiff realleges and incorporates by reference all preceding paragraphs.

126. General Condition III.B.1 of the Back River Permit requires Defendants to notify the Department by telephone within 24 hours of any noncompliance with any permit condition. Defendants must then provide information about the noncompliance, including a description of the discharge, the cause of the discharge, the duration of the discharge, and steps being taken to reduce and eliminate the noncomplying discharge, in writing within 5 days.

127. During the Department's inspection of the Back River WWTP conducted this summer, the Department identified many effluent violations between August 2020 and May 2021 for which no notification was provided, in violation of General Condition III.B.1. of the Back River Permit.

128. Defendants have continually failed to meet General Condition III.B.1, enforceable pursuant to the CWA, 33 U.S.C. § 1365(a)(1)(A).

Count 13: Failure to Comply with Back River Permit General Condition III.B.11 Regarding Reports and Information

129. Plaintiff realleges and incorporates by reference all preceding paragraphs.

130. General Condition III.B.11 of the Back River Permit requires Defendants to provide the Department, upon request, with copies upon request of records that are required to be kept by the Back River Permit.

131. The EPA conducts a DMR-Quality Assurance (DMR-QA) program to evaluate the analytical ability of the laboratories that perform self-monitoring analyses required by NPDES permits. Permittees required to participate in a DMR-QA study must report results for permitted analytes that are on the study analyte list. DMR-QA Study 41 ("Study 41") was initiated in April 2021, and requires permittees to submit results from chemistry, microbiology, and WET tests.

132. As a major permittee, the Back River WWTP is required to participate in the annual DMR-QA.

133. At the time of the inspection in June 2021, Defendants had failed to provide a response to the Maryland State DMR/QA Coordinator regarding the Facility's required participation in Study 41.

134. Defendants' failure to respond violates their responsibilities specified in General Condition B.11, which is enforceable pursuant to the CWA, 33 U.S.C. § 1365(a)(1)(A).

Count 14: Failure to Comply with Back River Permit General Condition III.B.3 Regarding Facility Operations

135. Plaintiff realleges and incorporates by reference all preceding paragraphs.

136. General Condition III.B.3 of the Back River Permit states that "all waste collection, control, treatment and disposal facilities shall be . . . operated efficiently to minimize upsets and discharges of excessive pollutants."

137. Furthermore, General Condition III.B.3 states that "[t]he permittee shall provide an adequate operating staff qualified to carry out operation, maintenance and testing functions required to ensure compliance with this permit. Superintendents and operators must be certified by the Board of Waterworks and Waste Systems Operators" in accordance with Maryland law.

138. Defendants have not maintained the Back River WWTP properly, and they are not identifying and addressing failures in a timely manner. For example, Defendants reported that the main centrifuge at the Back River WWTP had been malfunctioning since January 2021, but evidence of effluent violations led the Department to conclude that the centrifuge had not been functioning satisfactorily since mid-2020, resulting in improper processing of solids. In addition, Defendants did not contract for temporary centrifuges to be provided until March 2021.

139. Defendants' operational and maintenance failures at the Back River WWTP have led to effluent violations and other violations of the Back River Permit. The malfunctioning centrifuge has caused excessive TSS, BOD, and phosphorus discharges. The Department noted that many of these problems may have been preventable through routine maintenance.

140. In addition to the main centrifuge, the Department found broken and malfunctioning equipment throughout the plant that is further contributing to its poor performance and may also have been preventable through regular maintenance.

141. The Department further observed that, due to the treatment, operational changes, equipment failures, and effluent violations at the Facility, the Back River WWTP requires an updated Operations and Maintenance Manual.

142. The Department's June 2021 inspection of the Back River WWTP also revealed that of the Facility's 76 certified operators, only 2 hold permanent licenses; the remainder have temporary licenses.

143. Defendants have not maintained the Back River WWTP in good working order and are not operating the Facility efficiently, as demonstrated by the repeated effluent limit exceedances and violations, and their failure to comply with a number of permit conditions.

144. These chronic maintenance and operation failures, effluent limits exceedances, and failures to comply with other permit conditions detailed above indicate systemic operation and maintenance failure by Defendants at the Back River WWTP. This constitutes a violation of General Condition III.B.3, which is an enforceable violation of the CWA, 33 U.S.C. § 1365(a)(1)(A).

Count 15: Failure to Comply with Back River Permit General Condition III.B.4 Requiring Minimization of Impacts

145. Plaintiff realleges and incorporates by reference all preceding paragraphs.

146. Back River Permit General Condition III.B.4. states that the "permittee shall take all reasonable steps to minimize any adverse impact to waters of this State, human health or the environment resulting from noncompliance with any effluent limitations specified in this permit, and must perform accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge."

147. Defendants have continually violated General Condition III.B.4. by failing to take all reasonable steps to minimize or prevent adverse impact to waters of the State or to human health from the Back River WWTP. Repeated and continuous effluent limit exceedances have been documented by Defendants' own DMRs. Defendants have failed to maintain equipment in good working order, contributing to these exceedances. In addition, Defendants did not comply with the requirement to conduct a third toxic test following two consecutive tests showing acute or chronic toxicity, and they have repeatedly failed to report complete results from PCB testing. Defendants' continuous failure to comply with General Condition III.B.4 is enforceable pursuant to the CWA, 33 U.S.C. § 1365(a)(1)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Declare that Defendants are in violation of the CWA and implementing regulations, applicable Maryland state law and regulations, and the Permits;

B. Enjoin Defendants from further violation of the CWA and implementing regulations, applicable Maryland state statutes and regulations, and the Permits;

C. Order Defendants to:

i. Immediately comply with all legal requirements, including permit terms and conditions;

ii. Assess and remediate the harmed caused by its violations;

D. Assess civil penalties against Defendants and/or require the implementation of environmental projects to benefit the residents in areas impacted by the pollution violations;

E. Award Plaintiff the cost of litigation including reasonable attorney's fees, costs, and expert fees and expenses;

F. Retain jurisdiction until Defendants have fulfilled all legal and Court-ordered obligations; and

G. Grant such further relief as the Court deems just and proper.

Date: December 15, 2021

Respectfully submitted,

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Attorneys for Plaintiff Blue Water Baltimore

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BLUE WATER BALTIMORE, INC.	)	
	)	CIVIL ACTION-LAW
Plaintiff	)	
	)	No.: 1:21-cv-03176
v.	)	HON. LYDIA K. GRIGGSBY
	)	
MAYOR & CITY COUNCIL OF BALTIMORE	)	MOTION FOR PRELIMINARY INJUNCTION
	)	
Defendant	)	ORAL ARGUMENT REQUESTED

MOTION FOR PRELIMINARY INJUNCTION

1. Pursuant to Federal Rule of Civil Procedure 65, Plaintiff Blue Water Baltimore, Inc. ("BWB"), respectfully moves the Court for a mandatory preliminary injunction against Defendants Mayor & City Council of Baltimore ("the City") to immediately begin taking steps to address chronic and ongoing violations of the Clean Water Act 33 U.S.C. §1251 et seq. at the Back River Wastewater Treatment Plant ("WWTP") and the Patapsco WWTP (collectively "WWTPs").

2. On December 15, 2021, BWB filed a complaint against the City for numerous documented violations of the Clean Water Act at both WWTPs pursuant to 33 U.S.C. § 1365(a) which allows citizen suits to enforce provisions of the Clean Water Act. BWB agreed to a stay of the proceeding through April 13, 2021 in an attempt to negotiate a settlement. During that time, Baltimore City stated publicly that it was taking immediate steps to improve conditions and operations at both WWTPs. In numerous inspection reports going back to May 18, 2021 at Patapsco WWTP and June 16, 2021 at Back River WWTP, Maryland Department of Environment ("MDE") identified key measures that must be taken to improve conditions at both

plants and directed the City to immediately begin to address the permit violations.[1] However, the most recent inspection reports from MDE in May of 2022 at Patapsco WWTP and April 2022 at Back River WWTP, as well as an assessment from Maryland Environmental Service of the Back River WWTP on June 06, 2022, show the City continues to fail to undertake all of the necessary work to improve conditions at both WWTPs. Instead, conditions at the WWTPs continue to deteriorate and the concentration levels for many pollutants in the effluent at both WWTPs is higher now than when BWB filed the complaint six months ago.[2] This Court lifted the stay on May 6, 2022 and now BWB timely files this motion for preliminary injunction.

3. A preliminary injunction requires a plaintiff to demonstrate that: (1) it is likely to succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008).

4. As set forth in the accompanying memorandum, all elements required for a preliminary injunction are satisfied in this case. BWB is likely to succeed on the merits because the Clean Water Act is a strict liability statute and the City's violations are ongoing and continuous and have been well-documented and acknowledged by the City itself. 33 U.S.C. § 1311 (a). *See also Am. Canoe Ass'n v. Murphy Farms, Inc.*, 412 F.3d 536, 540 (4th Cir. 2005).

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[1] *See* Md. Dep't of Env't Inspection Reports ("MDE Inspection Reports") Ex. F, and Maryland Environmental Service Back River Wastewater Treatment Plant Assessment Report, June 6, 2022, Ex. A (Attached to Memo in Support of Motion).

[2] In March 2022, the primary outfall at the Back River WWTP had a total nitrogen concentration of 10.6 mg/L, a new record high and more than twice what they were when Blue Water issued its October 2021 notice of intent to sue. *See* Discharge Monitoring Reports Ex C. at 1. Further, the bacteria levels are several times over the threshold for safe human contact. At Patapsco WWTP, the total nitrogen concentration was 22.2 mg/L; more than six times higher than the annualized concentration permit limit. To date, the Patapsco WWTP has already exceeded its permitted annual nitrogen load limit for 2022. MDE Inspection Reports Ex. F at 194.

5. Second, BWB and its members are suffering irreparable harm from the pollution violations at the Back River and Patapsco WWTPs. Exposure to polluted effluent, including partially untreated sewage, can cause illness and is a threat to human health, and can harm aquatic ecosystems. In the absence of a preliminary injunction compelling the City to restore the status quo, BWB's members and the public at large will continue to be deprived of their right to safely fish, swim, or recreate in and around these waters. Third, the balance of equities weighs in the favor of granting a preliminary injunction because each day that the City fails to take appropriate steps to address the significant accumulation of solids at both plants, and fails to repair and maintain equipment or infrastructure, causes further damage to critical components of both WWTPs, harms aquatic ecosystems, and endangers the public health. Lastly, an injunction is in the public interest. Congress enacted the Clean Water Act to protect our nation's waterways and public health from the dangers of polluted water. The City's unlawful discharges of polluted effluent are exactly the sort of pollution Congress targeted and sought to eliminate by enabling citizens to seek injunctive relief through the citizen suit provision.

6. Pursuant to the case management order issued by the Court on December 15, 2021, the undersigned certify that the parties have conferred and have been unable to resolve this motion.

7. Plaintiff requests that oral arguments be scheduled on this matter. In light of the important public interest nature of this litigation and the nonprofit status of BWB, Plaintiff further requests a nominal bond of $1 be set under Fed. R. Civ. P. 65(c).

8. This motion is based on Plaintiff's attached memorandum, affidavits, and exhibits, the pleadings previously filed herein, and other such evidence as the Court deems appropriate.

WHEREFORE, BWB respectfully requests this Court grant a preliminary injunction and grant relief as set forth in the attached proposed order.

Respectfully submitted this 13th day of June, 2022.

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Attorneys for Plaintiff Blue Water Baltimore

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June, 2022, a copy of the foregoing Plaintiff's Motion for a Preliminary Injunction was served on all parties by filing the same electronically with the Clerk of the United States District Court for the District of Maryland.

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Attorneys for Plaintiff Blue Water Baltimore

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BLUE WATER BALTIMORE, INC.	)	
	)	CIVIL ACTION-LAW
Plaintiff,	)	
	)	No.: 1:21-cv-03176
v.	)	HON. LYDIA K. GRIGGSBY
	)	
MAYOR & CITY COUNCIL OF BALTIMORE	)	MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION
Defendant.	)	

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MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTION

I. INTRODUCTION

Baltimore's Patapsco and Back River Wastewater Treatment Plants (collectively "WWTPs" or "plants") are in crisis. Illegal discharges from the plants are fouling the Patapsco and Back Rivers, and ultimately the Chesapeake Bay, and presenting a significant threat of irreparable harm to the public and the environment, including Blue Water Baltimore ("BWB") and its members. Maryland Department Environment ("MDE") inspection reports have detailed ongoing violations at both plants for over a year. Despite the failing conditions of the plants, the City has not brought either plant into compliance. Immediate action by this Court is necessary to address this ongoing environmental disaster.

BWB initiated this civil action against Defendant Mayor & City Council of Baltimore ("the City") in December 2021, after the required 60-day notice to the City, MDE, and the U.S. Environmental Protection Agency ("EPA"). BWB's good faith attempts at working cooperatively with the City to reach an agreement to resolve the serious and ongoing pollution from the WWTPs has been met with alarming inaction by the City. Accordingly, BWB now moves for preliminary injunctive relief to immediately address the irreparable harm to its members and the environment.

The City has publicly conceded that it is violating many of the terms of its National Pollution Elimination System ("NPDES") permits issued under section 402 of the Clean Water Act, 33 U.S.C. § 1342. The scale, scope, and serious nature of the issues plaguing the Patapsco and Back River WWTPs are such that a comprehensive solution will take time to implement. However, there are a number of critical near-term actions, identified by MDE and characterized

by wastewater engineering experts as "low hanging fruit,"[1] that the City can and must undertake immediately to restore basic functions at both plants, to reduce the pollution violations that are irreparably harming BWB and its members, and to protect public and environmental health. The City has not disputed the necessity of these near-term actions, but has failed to implement them. BWB also seeks public notification to protect its members and the public from contacting water contaminated by illegal discharges from both plants.

II. BACKGROUND

A. PATAPSCO AND BACK RIVER WASTEWATER TREATMENT PLANT EFFLUENT LEVELS ARE VIOLATING PERMITTED LIMITS.

The Patapsco WWTP is located at 3501 Asiatic Ave, Baltimore, MD 21226 and treats wastewater from Baltimore City, Baltimore County, Anne Arundel County, and Howard County.[2] The Back River WWTP is located at 8201 Eastern Ave, Baltimore, MD 21224 and treats wastewater from Baltimore City and Baltimore County.[3] The City owns and operates the WWTPs under NPDES Permits issued pursuant to section 402 of the Clean Water Act, 33 U.S.C. § 1342 ("CWA" or "the Act").[4] The Back River and Patapsco WWTPs are the two largest wastewater treatment plants in Maryland and two of the largest single sources of nutrient and sediment pollution to the Chesapeake Bay.[5] Each plant is presently discharging a vast quantity of pollution beyond that allowed under its permit, far above the levels reported in recent years.[6]

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[1] Maryland Env't Service, Back River Wastewater Treatment Plant Assessment Report, June 6, 2022 ("MES Report"), Ex. A at 5.
[2] NPDES Permits for Back River and Patapsco River WWTPs ("NPDES Permits"), Ex. B at 1.
[3] *Id.* at 41.
[4] *Id.*
[5] Discharge Monitoring Reports for Patapsco and Back River WWTPs ("DMRs") Ex. C at 1-5. Pollution and violation data for individual facilities or for entire watersheds can be found in the U.S. Env't Protection Agency's Env't Compliance History Online database, *Available at:* https://echo.epa.gov/ (visited June 3, 2022).
[6] *Id.* at 1, 4. The permitted annualized concentration discharge limit for total Nitrogen at Back River WWTP is 4.0 mg/L and the last several months it has been over 6 mg/L. The permitted

For a brief period, each of the WWTPs appeared to be marvels of civil and environmental engineering, discharging enormous flows of wastewater at extraordinarily low levels of pollution consistent with the world class enhanced nutrient removal ("ENR") standard of technology.[7] The Back River WWTP's primary outfall (Outfall 001) began discharging wastewater, for example, at an average concentration of 3.0 milligrams per liter nitrogen in August 2017, a 65% reduction from the prior month following completion of the upgrade of the WWTP to ENR technology.[8] The Patapsco WWTP finished its upgrade several years later and began discharging wastewater at ENR standards by December 2018, an 80% reduction in nitrogen pollution from just three months prior.[9] With only a few exceptions, for a two-year period in 2019 and 2020, both WWTPs were discharging low levels of pollution, seemingly justifying the hundreds of millions of tax payer dollars invested in upgrading these two plants.[10]

Starting in February 2021, the City's pollution discharge monitoring reports ("DMRs") began to show significant problems.[11] Whereas the Patapsco and Back River WWTPs were discharging nitrogen pollution at concentrations of 3.5 and 3.2 milligrams per liter (mg/L) in December of 2020, respectively, by February, the two plants' discharges of pollution spiked to 19.6 and 6.1 mg/L, respectively, increasing about 460% and 90% over the course of two to three of months.[12] With only a single exception, each WWTP's monthly DMRs has shown nitrogen

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annualized concentration discharge limit for total Nitrogen at Patapsco WWTP is 3.6 mg/L and the last several months it has been well above 18 mg/L.

[7] *Id.* at 1, 3-4.

[8] *Id.* at 1.

[9] *Id.* at 4.

[10] The $650 million in state Bay Restoration Fund and Biological Nutrient Removal grants provided for the upgrade of these two plants is exclusive of the additional amount in state and local funds invested in the plants to prepare them to discharge at ENR levels; *see, e.g.*, Balt. City Capital Improvement Plans ("CIPs") Ex. D at 10; *see also* Md. Sec'y of the Env't Grumbles letter to Balt. Mayor Brandon Scott (October 14, 2021) ("Grumbles letter"), Ex. E at 1.

[11] DMRs, Ex. C at 1, 3-4.

[12] *Id.*

pollution concentrations well above the permitted annualized concentration discharge limits of 3.6 and 4.0 milligrams per liter every month in 2021 and 2022 for the Patapsco and Back River WWTPs, respectively.[13] As of April 2022, both WWTPs' discharge data showed that total nitrogen concentration well above permitted limits.[14] To date, the Patapsco WWTP has already exceeded its total permitted annual load limit for the full 2022 calendar year.[15] Last year, the Patapsco WWTP exceeded its NPDES permit limit by over 1 million lbs of total Nitrogen and if allowed to continue at the current rate it would be expected to exceed that in 2022.[16]

Excessively high levels of nitrogen from the WWTPs are not the only pollutant of concern. The WWTPs have also been violating their permitted limits for total suspended solids ("TSS") and Phosphorus, both of which can cause ecosystem damage.[17] Bacteria levels several times over the safe contact limit have been documented in the Back River and Patapsco River, prompting MDE to issue a public health advisory in the Back River in April of this year.[18]

B. BWB ACTS TO RETURN FACILITIES TO COMPLIANCE.

BWB monitors ambient water quality at 51 stations in the rivers, streams, and harbor of the Patapsco River watershed and collects data about several different water-health parameters including but not limited to: total nitrogen, total phosphorus, dissolved oxygen, turbidity, and enterococcus bacteria.[19] Data and samples are collected and analyzed according to a protocol

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[13] *Id.*
[14] DMRs, Ex. C at 1, 3-4. Note that the DMRs for April 2022 have just been released. Patapsco WWTP showed an increase to 23.6 mg/L total nitrogen, while Back River WWTP came down from the previous month but is still well above permit limits at 6.8 mg/L, which is also twice the levels of ENR standard of 3.0 mg/L .
[15] Md. Dep't of Env't Inspection Reports ("MDE Inspection Reports") Ex. F at 194.
[16] *Id.*
[17] *Id.* at 17, 167.
[18] See https://news.maryland.gov/mde/2022/04/22/public-health-advisory-and-progress-report-issued-for-back-river/
[19] Declaration of Alice Volpitta ("Volpitta Decl."), Ex. G at 4 ¶ 10.

reviewed and approved by the Chesapeake Bay Program. BWB maintains Tier III certification (the highest level) through the Chesapeake Monitoring Cooperative.[20]

Blue Water Baltimore's monitoring program has expanded both temporally and spatially over the years and has now generated 10-15 years' worth of water quality data at each monitoring station. The robust dataset allows BWB staff scientists to evaluate water quality trends over time, and to detect excursions from baseline water health. BWB posts water quality results online to educate the public about the health and safety of Baltimore's waterways.[21] BWB also shares its data directly with MDE, Baltimore City, and Baltimore County.[22]

Prior to 2021, for nearly five straight years, BWB's routine water quality monitoring of enterococcus bacteria levels at the "Mainstem B" Patapsco River sampling site, which is situated directly on top of the submerged effluent pipe that discharges treated wastewater from the Patapsco WWTP, often found bacteria levels below the assessment threshold level set in state regulations.[23] In April 2021, BWB staff collected its first tidal water quality sampling data for the year and noted extremely elevated levels of bacteria at the "Mainstem B" Patapsco River sampling site. BWB samples at this sampling site continued to show dramatic exceedances six more times throughout 2021, and again in May 2022.[24]

After the second sample showing high bacteria levels, in May 2021, BWB staff relayed its monitoring data and concerns about floating solids seen near the effluent pipe from the Patapsco WWTP to MDE and requested that MDE inspect the facility.[25] MDE conducted an

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[20] *Id.*
[21] Data are available at: www.baltimorewaterwatch.org
[22] Volpitta Decl., Ex. G at 4 at ¶ 11.
[23] *Id.* at 2. The threshold levels for enterococcus bacteria are established in Code of Maryland Regulations at COMAR 26.08.02.03-3A(1).
[24] *Id.*
[25] MDE Inspection Reports, Ex. F at 205.

inspection on May 6, 2021 and found the Patapsco WWTP in noncompliance with several requirements of its NPDES permit.[26] The inspector found both "insufficient maintenance and operational staff" and a number of "equipment failures."[27] Notably, the inspection found that the recently installed denitrification system, funded through the Bay Restoration Fund for the purpose of meeting ENR levels at a cost of over $200 million, was being "bypassed" altogether.[28] More than one year later, and despite the warning presented in the May 6, 2021 inspection report, the Patapsco WWTP is currently bypassing the denitrification filters.[29]

During a May 6, 2021 inspection, MDE determined that floating solids in the Patapsco River near the WWTP discharge were caused by the long-term failure of the City to comply with a 2017 consent order it had entered into with MDE to resolve violations related to the illegal discharge of solidified fats, oils, and grease ("FOGs") at the Patapsco WWTP.[30] The inspection report noted a number of capital improvement projects that the City agreed to complete had not been funded, and thus the City "failed to comply with the Consent Order (CO-16-2405)."[31]

Shortly after discovering the extensive violations at the Patapsco WWTP, on June 16, 2021, MDE conducted an inspection of the Back River WWTP and found that the City had widespread violations of its NPDES permit as well.[32] The inspection report noted major concerns with staffing at the Back River WWTP, including that "of the 76 certified operators only 2 have permanent licenses."[33] The inspector found that "[f]acility maintenance directly affects the ability of the treatment plant to operate efficiently and to comply with its NPDES permit" and

[26] *Id.* at 204.
[27] *Id.* at 209.
[28] I*d.*; Grumbles Letter, Ex. E at 1.
[29] MDE Inspection Reports, Ex. F at 185.
[30] *Id.* at 206.
[31] *Id.* at 211-212.
[32] *Id.* at 80.
[33] *Id.* at 92.

that "staff must be trained and competent to perform maintenance inspection and make precise repairs."[34] The inspection report described numerous violations and deficiencies in the Back River WWTP "Self-Reporting Program" and provided a table of numeric effluent violations that spanned more than 8 pages.[35]

After the June Back River WWTP inspection report was publicly released in August 2021, BWB issued a press release calling for "immediate corrective measures."[36] BWB began "sounding the alarm on these violations on behalf of the citizens being harmed by this ongoing pollution" because "these facilities are irreversibly contributing massive amounts of pollution to the Patapsco and Back Rivers, and ultimately the Chesapeake Bay, resulting in untold harm to ecological and public health."[37]

In September 2021, a MDE inspector returned to the Back River WWTP and found widespread noncompliance yet again.[38] Not only were 16 of the 52 denitrification filters malfunctioning and covered in floating solids and "scum," but the inspector also found "unacceptable" growth of algae and reeds and shrubs growing within the treatment processes causing a "short circuiting of the system" despite the fact that such "growth is easily removed and should not be allowed to get to the condition" found by the inspector.[39] The September 2021 inspection report included numerous images of widespread disrepair and malfunctioning equipment at the Back River WWTP.[40]

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[34] *Id.*
[35] *Id.* at 93-101.
[36] BWB, PRESS RELEASE: BWB Baltimore Alerts MDE to Major Deficiencies at Baltimore's Wastewater Treatment Plants. (August 30, 2021). *Available at:* https://bluewaterbaltimore.org/blog/press-release-wastewater/.
[37] *Id.*
[38] MDE Inspection Reports Ex. F at 75-76
[39] *Id.* at 75, 68.
[40] *Id.* at 63-74.

On October 5, 2021, BWB transmitted to the City a notice of intent to file a citizen suit under the Clean Water Act for hundreds of violations at the Patapsco and Back River WWTPs with requisite notice also provided to MDE and EPA.[41] Under the CWA, the transmission of this notice begins a 60-day period during which the party providing notice cannot commence suit to allow the state or federal government to investigate and commence an enforcement action. 33 U.S.C. § 1365. Neither MDE nor EPA commenced an enforcement action during this period. Therefore, BWB filed a complaint in this Court on December 15, 2021.[42] Five weeks later, MDE filed a complaint in the Circuit Court for Baltimore City.[43] BWB swiftly filed an unopposed motion to intervene on February 2, 2022, which the Circuit Court granted more than two months later on April 8, 2022.[44]

C. UNRESOLVED ISSUES ARE ONGOING AT THE PATAPSCO AND BACK RIVER WWTPS.

The City provided a "Strategic Plan for MDE Compliance" to MDE on September 17, 2021.[45] In this Strategic Plan, the City pledged that, in order "[t]o ensure that any recent departure from normal performance levels is temporary, [Baltimore City Department of Public Works] has undertaken a comprehensive analysis of root causes and/or contributing factors to any perceived noncompliance."[46] The Strategic Plan established a comprehensive suite of "Immediate", "Short Term (Beginning within 2-6 months)", and "Long Term (beyond 6

[41] BWB Notice of Intent to File Citizen Suit for Clean Water Act Violations (October 5, 2021) ("BWB NOI Letter"), Ex. I at 7-18.
[42] See ECF No.1.
[43] Circuit Court of Maryland Docket for 24-C-22-000386 ("Md. Circuit Court Docket"), Ex. J at 2.
[44] *Id.*
[45] Balt. Dep't of Public Works Strategic Plan for MDE Compliance ("Strategic Plan"), Ex. K, *See also* Timothy Wheeler, Repairs under way at Baltimore's troubled sewage plants, but violations continue. BAY JOURNAL (October 15, 2021) *Available at:* https://bit.ly/3QgcWQG
[46] Strategic Plan, Ex. K at 3.

months)" actions necessary to correct the widespread problems identified in the document. Thus the City gave MDE, BWB, and the public the impression that the majority of the actions labeled "immediate" or "short term" would occur within a six-month period, ending in March 2022. That has not happened.

For example, at the Back River WWTP, the Strategic Plan noted a central issue was the inability to adequately manage sewage sludge and solids, because if not managed shortly after entering the facility the "downstream treatment facilities become overwhelmed."[47] To that end, the City committed to immediately address the cleaning and repair of four of the eleven primary settling tanks, only three of which were in service in September 2021.[48] Eight months later, on May 27, 2022, only two primary settling tanks were in operation at the Back River WWTP.[49] The City has failed to take basic actions to address the back-up of sludge and solids cascading through the treatment plants - a facet of wastewater treatment that the City itself identified as an "immediate" need nearly nine months ago.[50] Similarly, the City claimed in its September 2021 Strategic Plan that the critical sludge dewatering process would be resolved by November 2021, when the last of four centrifuges would be repaired and put back into service.[51] As of April 28, 2022, MDE reported that only three of the four centrifuges are operational at Back River WWTP, and only in manual (not automatic) mode.[52] The City failed to complete this crucial and immediate action over the last nine months and in its June 6, 2022 report, MES identified fixing the centrifuges and enhancing the dewatering capacity at the Back River WWTP as the single

[47] *Id.* at 4.
[48] *Id.* at 6.
[49] Md. Dep't of Env. Back River Progress Reports ("Back River Progress Report."), Ex. L at 5.
[50] Strategic Plan, Ex. K at 6.
[51] Strategic Plan, Ex. K at 6.
[52] Back River Progress Report, Ex. L at 1.

greatest priority, more than six months after the City indicated it would have all centrifuges functioning.[53]

An example of a major problem identified in the City's Strategic Plan for the Patapsco WWTP was that a critical component of the treatment process, the gravity sludge thickeners, were "inundated with rags in the center column" causing problems for many of the WWTP's "downstream processes."[54] Two of the first activities listed as "immediate" in the Strategic Plan involved regularly cleaning out the rags on an ongoing basis and, relatedly, skimming surface water prior to the final discharge in order to prevent debris, FOGs, and solids from causing malfunctioning equipment and making their way into the final discharge.[55] To date, these immediate and basic maintenance activities, identified over eight months, are still not being done.[56]

Furthermore, the Strategic Plan indicated that "[a]n immediate address to the FOG issues has been implemented" and that "the use of the scum troughs will directly result in removing FOG from the plant effluent" in the "immediate" term.[57] Nevertheless, the latest MDE inspection of the Patapsco WWTP noted that "all of the [primary settling tanks] were overwhelmed with floating scum and FOG" and there was a "[h]eavy layer of scum at the chlorine contact chamber" just before final discharge from the WWTP.[58]

MDE inspections reveal that even some basic business and housekeeping operations have not been adequately addressed more than a year after BWB took action. For example, the Strategic Plan claimed that "[t]he reporting and business process violations highlighted in the

[53] MES Report, Ex. A at 5.
[54] Back River Progress Report, Ex. K at 8.
[55] *Id.* at 10.
[56] MDE Inspection Reports, Ex. F at 118-124, 214-217.
[57] Strategic Plan, Ex. K at 10.
[58] MDE Inspection Reports, Ex. F at 16.

Violations Report have been corrected, or will be corrected soon."[59] Yet nearly seven months later, on April 6, 2022, MDE found numerous reporting, monitoring, and process violations, including "problems with maintenance and operations in certain areas of the [Patapsco] plant that can lead to process issues" and that "could compromise sample results."[60]

Additionally, the City committed in the Strategic Plan to create a new data dashboard to serve as "a repository of all permit and plant performance data."[61] To this date, the City has still not publicly released the Data Dashboard and has not provided any data to BWB, despite a request for such data to help inform the status of ongoing operations. Making such data available to regulators and technical experts is essential "so that technical experts and decision makers can make sound decisions regarding paths forward on both technical and managerial grounds."[62]

Thus, as detailed above, instead of resolving problems through a menu of immediate and short term activities described in the Strategic Plan, the City has made little to no progress and the conditions have instead further deteriorated.

D. ISSUES PERSIST EVEN AFTER MES ASSUMED CONTROL OF THE BACK RIVER WWTP.

The City's lack of progress in resolving issues identified in its September 2021 Strategic Plan, along with an alarming and continuing deterioration in conditions at the Back River WWTP, led the Maryland Secretary of the Environment to invoke rarely used authority under Md. Annotated Code, Env't Art., § 9-252 and Res. Art, § 3-109 to direct MES to "take charge of the Back River WWTP, including its operations, maintenance, and improvements functions."[63] The Directive was issued on March 27, 2022, more than six months after the Strategic Plan was

[59] Strategic Plan, Ex. K at 4.
[60] MDE Inspection Reports, Ex. F at 136.
[61] Strategic Plan, Ex. K at 6.
[62] Declaration of Randall Gracheck, P.E. ("Gracheck Decl."), Ex. H at 3 ¶ 10.
[63] Md. Dep't of Env't Directive to Md. Env't Serv. ("MES Directive"), Ex. M at 8.

submitted to the MDE and over three months after BWB filed its complaint in this matter. The Directive noted it was issued because MDE found that the physical infrastructure at the WWTP had worsened to the point of "precipitous decline."[64]

The City has repeatedly failed to comply with MDE information requests and corrective action. For example, on March 3, 2022, weeks prior to the Order and Directive, MDE submitted a series of letters to the City requesting certain information to be produced by the City.[65] The City responded to some of the requests, but failed to respond to other requests for information and, in some instances, provided a response that indicated an outright refusal to take very specific actions MDE indicated were necessary to quickly resolve the violations at both WWTPs.[66]

For example, MDE specifically requested that the City provide accelerated completion dates for two of the most critical projects at the Patapsco WWTP - the Headworks Project "to ensure compliance with TSS effluent limits and prevent the discharge of floating solids" and the PST Scum Collection Rehabilitation Project "to ensure compliance with TSS effluent limits and prevent the discharge of floating solids."[67] The City declined. Instead of providing an accelerated completion date for these critical projects, the City stated only that the bids for each project were higher than the City estimated and that it would re-advertise the projects again, with no discussion of when or whether the completion date would be accelerated.[68]

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[64] *Id.* at 5.
[65] Md. Dep't of Env't Information Request Letter to Balt. City (March 3, 2022) ("MDE Request Letter"), Ex. N.
[66] *Id.* at 15-17. Seven items in the MDE's request letters were never addressed by the City through the submission of a response letter to MDE.
[67] *Id.* at 8, 11.
[68] *Id.* at 15-17.

"Severe staffing shortages" at the two WWTPs have been a root cause of the ongoing violations.[69] While critical capital improvement projects take multiple years to complete, there is no technical reason that the processes of recruiting, hiring, and resolving compensation and personnel issues cannot be addressed immediately, as acknowledged by the City initially in the Strategic Plan.[70] Nevertheless, more than eight months following the release of the Strategic Plan and months after all immediate and short-term activities in the plan were to be completed, there are still high vacancy rates and staffing shortages at both plants.[71]

The City's response to MDE's March 3, 2022 information request letter reflected a lack of urgency or serious attention to staffing issues, stating that the process will take more than three years to resolve.[72] This is particularly concerning given that three months later Back River WWTP was characterized in MES's June 6, 2002 report as facing "***a system-wide catastrophic failure to operate and maintain this facility at every level***. These include personnel, morale, licensing, and certification, hiring of competent personnel, firing of incompetent personnel, accountability and more." [73] (Emphasis added).

MES further explained challenges in working with Baltimore City Department of Public Works ("DPW"), the City agency responsible for running the WWTPs:

> **Based on what MES has seen in the roughly two months at this facility, the gravity of this issue does not seem to resonate with DPW staff as their response to the MDE order seems to have been met with a "business as usual" approach.** When "business as usual" includes all the issues mentioned throughout this report, that is simply not acceptable.[74]

(Emphasis in original).

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[69] Strategic Plan, Ex. K at 3; *See also* Gracheck Decl., Ex. H at 4.
[70] *Id.* at 19.
[71] MDE Inspection Reports, Ex. F at 195, *See also* MES Report, Ex. A at 34.
[72] MDE Request Letter, Ex. N at 20.
[73] MES Report, Ex. A at 5.
[74] *Id.* at 47.

MES notes that there seems to be a "lack of understanding regarding the urgency of the issues at the Back River WWTP" on the part of DPW and that "lack of responsiveness in addressing critical issues that need to be addressed to get the plant back in compliance keeps frustration high and is having an impact throughout the facility."[75]

MDE's May 18, 2022 inspection report for the Patapsco WWTP documented that the plant has shown little to no progress from previous inspections and worsening conditions at the plant.[76] And although it has been reported that MDE may be considering a similar takeover, it has not yet issued an order or directive for MES to take charge at the Patapsco WWTP.[77]

E. RECORDS SHOW A LONG HISTORY OF DEFERRED MAINTENANCE AT BOTH WWTPS.

While the City has claimed the failures at both the Patapsco and Back River WWTPs would have not occurred but for the COVID-19 pandemic and a ransomware attack, it is evident from the City's own budgets that for the last decade it has consistently failed to fund projects identified by its own engineers as necessary for required maintenance and upgrades.[78] Capital wastewater projects included in the City's Capital Improvement Plans ("CIPs") between fiscal 2014 and fiscal 2023 for the Patapsco and Back River WWTPs show some of the many instances where a project was initially identified in a certain fiscal year CIP with a certain estimated cost

[75] *Id.* at 39.
[76] MDE Inspection Reports, Ex. F at 197-201.
[77] Scott Dance, Inspection Shows Continuing Failures at Baltimore's Patapsco Wastewater Plant as Maryland Mulls Another Takeover, THE BALT. SUN (June 2, 2022, 4:03 PM), https://www.baltimoresun.com/news/environment/bs-md-patapsco-inspection-20220602-mqcfwizfefc2hmxu4xxipui2b4-story.html.
[78] See CIPs, Ex. D at 6 for one example showing that in 2019, the City identified a renovation project for "sludge storage and dissolved air flotation No. 3 and 4 at Back River Wastewater Treatment Plant" that would be completed in fiscal 2021 at a cost of about $9.6 million; p. 5 of the exhibit shows the same project listed three years later with a new completion date of 2025 and a cost increase to 88.8 million. Sludge storage has been identified by the MDE and MES as among the biggest issues facing the Back River WWTP.

and completion date with subsequent inclusion in a later CIP with a later completion date, indicating that the City delayed moving forward with the necessary upgrade or maintenance project. In many cases, the later CIP reference shows that the estimated cost has gone up and/or that the City has not expended any funds in the intervening time period. Each of the projects were designed to maintain, repair, or upgrade a component of the treatment process, and have recently been identified by the City, MDE, or MES as malfunctioning or contributing to the violations. The result of the City's failure to fund repairs and maintenance is the "state of catastrophic disrepair" at the two WWTPs that we currently face.[79]

For example, the ongoing discharges of concentrated forms of pollution via FOGs and floating solids through all treatment unit processes indicate not only a systemic failure to complete necessary capital improvement projects, but also an ongoing failure to conduct basic operations and maintenance at both WWTPs.[80] As just one example, the Patapsco WWTP manager told the MDE inspector on May 6, 2021 that the lack of back-up power during a power outage was a cause of a discharge of FOGs, but that the issue had been resolved through the implementation of a new procedure to check back-up batteries on a monthly basis.[81] Yet, the MDE inspector noted a year later during the May 18, 2022 inspection that this procedure was not followed, resulting in another power outage at the WWTP "which caused an upset of the system and high enterococcus sample values."[82]

In sum, the deteriorating conditions at the Patapsco and Back River WWTPs were years in the making and are currently causing immediate and irreparable harm. The violations of NPDES permits and statutory requirements have persisted and are ongoing. In fact, in many

[79] Gracheck Decl., Ex. H at 1 ¶4.
[80] MES Report, Ex. A at 48.
[81] MDE Inspection Reports, Ex. F at 206.
[82] *Id.* at 191.

respects, the violations have worsened following the filing of BWB's complaint in this matter. That is why BWB asks the Court to order the City take immediate action to reverse its failing compliance track record.

F. EXPOSURE TO PARTIALLY TREATED WASTEWATER POSES SERIOUS RISK TO PUBLIC HEALTH.

BWB has been monitoring water quality near the Patapsco WWTP effluent pipe since 2013. During this time BWB recorded some samples above the Code of Maryland Regulations (COMAR) threshold for enterococcus bacteria, but the frequency of these excursions was unusually high in 2021.[83] COMAR water quality thresholds are established by the State to protect public health. Bacteria levels often fluctuate with storm events and it is difficult to predict when and where bacteria levels will occur due to changing tides.[84]

Exposure to surface waters that contain bacteria levels above the safe contact standard puts people at risk for contracting a number of serious illnesses that can result in hospitalization including gastroenteritis, staph infections, hepatitis, giardiasis, vibriosis, leptospirosis, and more.[85] The public routinely comes into contact with the water in areas known to be impacted by the effluent discharged from the Patapsco WWTP, through activities like fishing, crabbing, paddling, wading jet-skiing, and boating around Baltimore Inner Harbor and the greater Patapsco River.[86] Likewise, effluent from the Back River WWTP impacts areas popular for water recreation in Baltimore County, including Cox Point Park, Rocky Point Park, Lynch Point Park, and others.[87] MDE began monitoring weekly at locations downstream of the Back River WWTP

[83] Volpitta Decl. Ex. G at ¶ 3.
[84] *Id.* at 6 ¶ 16.
[85] I*d.* at 5 13..
[86] This includes areas such as Canton Waterfront park, the Maryland Science Center, and the Dragon Boat area. *See Id.* at 5 ¶ 14 for a complete list and locations.
[87] *Id.* at 6 ¶ 15.

on April 19, 2022 and have found enterococci bacteria levels many times higher than the permitted limit and higher than state thresholds for safe contact.[88] Although MDE declared a public health advisory for the Back River on April 22, 2022 to remain in place until further notice, warning signs that were posted near Cox Point Park and other areas in Baltimore County came down before Memorial Day despite MDE never revoking the advisory.[89]

III. STANDARD OF REVIEW

To receive a preliminary injunction, a plaintiff must show that: (1) it is likely to succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

First a plaintiff must show they are likely to succeed on the merits. *Winter*, 555 U.S. at 20. "The standard for preliminary injunctive relief requires a showing of a 'likelihood of success on the merits rather than actual success' as necessary for permanent relief." *Sierra Club v. U.S. Army Corps of Engineers*, 645 F.3d 978, 993 (8th Cir. 2011) (quoting *Winter*, 555 U.S. at 32).

Second, a plaintiff must prove they are likely to suffer irreparable harm in the absence of preliminary relief. *Winter*, 555 U.S. at 22. Irreparable harm is "suffered where monetary damages are difficult to ascertain or are inadequate." *Danielson v. Loc. 275, Laborers Int'l Union of N. Am.*, 479 F.2d 1033, 1037 (2d Cir. 1973). "The 'irreparable harm' to be suffered must be 'neither remote nor speculative, but actual and imminent.'" *De Simone v. VSL Pharm., Inc.*, 133 F.Supp.3d 776, 799 (D.Md. 2015) (quoting *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir. 1991)).

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[88] Md. Dep't of Env't Bacteria Monitoring Report ("MDE Bacteria Monitoring"), Ex. O at 2-4.
[89] *See* https://news.maryland.gov/mde/2022/04/22/public-health-advisory-and-progress-report-issued-for-back-river/

The court then looks to see if the balance of equities tips in the plaintiff's favor which requires balancing "the competing claims of injury" and considering the effect on each party of granting or withholding injunctive relief. *Winter*, 555 U.S. at 24. Lastly, the plaintiff must show that the grant of a preliminary injunction will be in the public interest. *Id*. at 20. Courts are likely to "consider the balance of the equities and the public interest factors together" when a case concerns compelling public interest. *Mt. Valley Pipeline, LLC v. Simmons*, 307 F.Supp.3d 506, 529 (N.D.W. Va. 2018).

IV. ARGUMENT

A. BWB IS LIKELY TO SUCCEED ON THE MERITS BECAUSE MOST OF THE VIOLATIONS DESCRIBED IN THE COMPLAINT ARE BASED ON DEFENDANT'S SELF-REPORTING OR DOCUMENTED IN MDE INSPECTION REPORTS.

The Clean Water Act's NPDES permitting program is built on a foundation of self-reporting. *Sierra Club v. Union Oil Co*., 813 F.2d 1480, 1491 (9th Cir. 1987). As permitted dischargers under the State's delegated NPDES program, the City is required to submit discharge monitoring reports ("DMRs") of pollution levels on a schedule specified in the permit, typically monthly for both the Back River and Patapsco WWTPs. 33 U.S.C. § 1342(b)(1); *See also Piney Run Pres. Ass'n v. County Comm'rs of Carroll County*, 268 F.3d 255, 265 (4th Cir. 2001).

These DMRs are publicly available on the ECHO database, allowing state and federal regulators and the public to easily track pollution levels and any violations for each permitted discharger.[90] Combined with the strict liability regime created by the CWA, this system of self-reporting pollution violations enables streamlined prosecution of violations, thereby providing greater deterrence and promoting compliance with the CWA. *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 412 F.3d 536, 540 (4th Cir. 2005).

[90] *See* https://echo.epa.gov/

On October 5, 2021, BWB submitted a notice of intent to sue the City, in accordance with CWA regulations, relying, in part, on the City's own DMRs. The letter put the City, the State, and EPA on notice that the City's own self-reported data showed 124 discrete violations at the Patapsco WWTP and 130 violations at the Back River WWTP between January 2017 and August 2021.[91] In addition to these violations, the notice also alleged a number of other violations, such as failure to timely submit reports and to meet specified permit requirements.

On December 15, 2021, BWB filed a 15-count complaint with this Court[92] based, in part, on the City's self-reported DMR pollution and violation data, including 133 violations at the Patapsco WWTP and 138 violations at the Back River WWTP between January 2017 and September 2021 that served as the basis for counts 1 and 9 of the complaint.[93] The remaining counts included a host of other violations of the two permits for the WWTPs, typically non-numeric violations based on the findings of numerous findings described by MDE inspectors.[94]

In a separate case filed in Maryland's Circuit Court for Baltimore City on January 21, 2022, the State of Maryland alleged in its own complaint a similar litany of violations, including 131 violations at Back River WWTP based on self-reported DMR data between May 2017 and November 2021 and 23 violations at Patapsco WWTP between January 2020 and November 2021.[95] The State's complaint similarly included numerous additional violations, including

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[91] BWB NOI Letter, Ex. I. Plaintiff's notice letter referenced the 863 individual days in violation of the Patapsco WWTP and 1,515 such "exceedance days" of the Back River WWTP. Under both state and federal law, each day of violation constitutes a separate penalty. See 33 U.S.C. § 1319(d); Code of Md., Env't Article § 9-342.

[92] ECF No. 1.

[93] *Id.* at 15, 22. The Complaint references 899 exceedance days at the Patapsco WWTP and 1,611 exceedance days for the Back River WWTP over this period.

[94] All inspection reports are public records that may be obtained via the Md. Public Info. Act, some of which may be found on the State's Open Data Portal at: https://bit.ly/3mH8InA MDE has also cataloged all recent inspection reports of the Back River WWTP on its webpage, *Available at:* https://bit.ly/3xK5A0G

[95] Md. Circuit Court Docket, Ex. J at 2.

unauthorized discharges, the failure to report permit limit exceedances, and several other violations based on the findings of State inspectors. *Id*.

The City cannot credibly deny the bulk of these alleged violations, which are based on its own self-reported data required to be regularly submitted pursuant to State and federal law and based on the reported findings of qualified State inspectors evaluating the compliance status of the WWTPs after thorough site visits.

Moreover, the City acknowledged the broad scope of the violations plaguing the two WWTPs in the Strategic Plan it submitted to MDE in September 2021.[96] The Strategic Plan describes in detail the equipment and staffing deficiencies that resulted in violations the City acknowledges occurred.[97] Indeed, the Mayor of Baltimore issued a statement on March 28, 2022 acknowledging the long-term problems at both WWTPs and the efforts needed "to get both of these facilities ***into compliance***."[98] (Emphasis added).

On May 17, 2022, Defendant filed with this Court a notice of intent to file a motion to dismiss.[99] In the notice, Defendant identified only 4 of the 15 counts in Plaintiff's complaint as arguably subject to dismissal. Notably, none of the four counts for which Defendant seeks dismissal include the hundreds of self-reported violations or many of the other violations identified by the State in its inspection reports. *Id*.

In sum, because an overwhelming number of violations of federal law were either self-reported by the City or included in State inspection reports, and the violations or their root cause were otherwise publicly acknowledged by the City, there can be no material dispute that BWB

[96] Strategic Plan, Ex. K.
[97] *Id.* at 4, 14-17.
[98] Mayor Scott's Statement on Back River and Patapsco Wastewater Treatment Plants, available at: http://bit.ly/393LvJ2
[99] BWB NOI Letter, Ex. I

has demonstrated a likelihood of success on the merits of this case. *See Sun Microsystems, Inc. v. Microsoft Corp. (In re Microsoft Corp. Antitrust Litig.),* 333 F.3d 517, 536 (4th Cir. 2003).

B. BWB WILL SUFFER IRREPARABLE HARM WITHOUT A PRELIMINARY INJUNCTION.

Pollution resulting from the City's ongoing and chronic violations of its NPDES permits for both WWTPs poses an immediate threat to public health and the environment. These threats directly and adversely impact BWB and its members. The Court must determine whether a plaintiff has demonstrated irreparable harm by "clear and convincing evidence" in order to obtain relief. *Montrose Parkway Alternatives Coal. v. U.S. Army Corps of Eng'rs*, 405 F.Supp.2d 587, 592 (D.Md. 2005). The requirement that one establish a likelihood of suffering irreparable harm is not satisfied by suggesting a mere possibility of such harm. *Winter*, 555 U.S. at 22. "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Id*.

The traditional analysis for obtaining preliminary relief requires a showing that the plaintiff itself will be irreparably harmed unless preliminary relief is granted. *See Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv*., 886 F.3d 803, 822 (9th Cir. 2018). A plaintiff cannot satisfy this requirement by showing only that, in the absence of relief, a third party will be harmed. *See Immigrant Legal Res. Ctr. v. City of McFarland*, 827 F. App'x 749, 751 (9th Cir. 2020) (Mem.) ("The district court abused its discretion in . . . focus[ing] its irreparable harm analysis on the prospect of harm to third parties."). The Supreme Court has described the irreparable-harm requirement as necessitating a showing of harm to the plaintiff. *See*, *e.g.*, *Winter*, 555 U.S. at 22. Other courts have also described the requirement in these same terms,

even when the claims under review are Clean Water Act claims. *See, e.g., Defs. of Wildlife v. U.S. Army Corps of Eng'rs*, 730 F. App'x 413, 415 (9th Cir. 2018).

A plaintiff may claim that its interest in the environment is or will be irreparably harmed by a defendant's conduct that is harming or will harm the environment. For instance, plaintiffs may claim their interest in "hunting, fishing, birdwatching, [and] nature-indulging" will be irreparably harmed by a defendant's actions that harm the environment in which these activities occur. *Sierra Club,* 645 F.3d at 994. In such cases, "imprecise language" can suggest that proof of harm to the environment itself, "rather than to the plaintiffs' . . . enjoyment of it" is sufficient, but the harm, if it is to meet the requirements for preliminary relief, is "necessarily…to the plaintiffs' specific aesthetic, educational and ecological interests." *Id.* at 995.

As MES stated in its June 6, 2022 report regarding the Back River WWTP: "[t]he impacts on the environment are harmful to our public waters and certainly elevate responsiveness to a level that demands ***immediate*** attention and actions to remedy."[100] (Emphasis added). While MES only reviewed the Back River WWTP, recent MDE inspections show that the conditions at the Patapsco WWTP are no better.[101]

The City's ongoing violations of its NPDES permits and other requirements are causing irreparable harm to the environment and to BWB and its members. It is uncontroverted that the City is violating numerous effluent requirements and that it has failed to conduct even basic routine maintenance at the WWTPs.[102] Both plants are discharging excessive nutrients, including nitrogen and phosphorus in violation of their NPDES permits.[103] These nutrients are known to cause algae blooms that can be toxic, and some types of algae blooms are known to cause illness

[100] MES Report, Ex. A at 39.
[101] MDE Inspection Reports, Ex. F at 196-201.
[102] *See, e.g., Id.* at 31, 46, 51-53.
[103] DMRs, Ex. C at 1, 3-4.

in people and marine life. Certain genera of toxic algae such as *Karlodinium* can also cause fish kills.[104] The public, including members of BWB, who enjoy all types of water recreation, including fishing, boating, and wildlife watching, are at risk of experiencing skin irritation and other physical ailments if they come into contact with harmful algae blooms, especially during the summer months, as recreational activity increases.[105]

The continuing discharge of excessive nutrients including nitrogen and phosphorus from the WWTPs is also known to lead to a decay process known as eutrophication, caused by the die-off of algae blooms. This process depletes the oxygen in the water, resulting in fish kills. The dead and decaying algae also causes malodors that negatively impact those who live and/or recreate in the vicinity of the impacted waterways.[106]

Additionally, the solid material being discharged from the Back River WWTP and floating to the surface of the river negatively impacts the public and BWB members who live and recreate in the Back River community. These solids are partially untreated sewage sludge, which for obvious reasons causes the public and BWB members to lose enjoyment in water-based recreational activities in Back River.[107]

The City's continuing NPDES permit violations are directly affecting BWB and its members' enjoyment and use of the waterways in question and causing irreparable harm.[108] It is uncontroverted that numerous permit violations have resulted in the release of pollutants that have been proven to be harmful to the environment and humans in a variety of ways. The release of these pollutants into the Back River and the Patapsco River, both of which drain to the

[104] Volpitta Decl., Ex. G at 2 ¶ 4.
[105] *Id.*
[106] *Id.* at 2 ¶ 5.
[107] *Id.* at 3 ¶ 6.
[108] *Id.* at 1 ¶ 2.

Chesapeake Bay, directly and adversely impacts BWB's members' enjoyment and safe use of the waterways.

Finally, the illegal contamination being released from the WWTPs threatens the health and safety of BWB employees and volunteers who routinely sample the impacted waterways and undertake other volunteer efforts on or in the water. These individuals are directly exposed to the contaminated water during sampling and other events. Therefore, there is an ongoing threat to their health as a result of them conducting these essential activities.[109]

C. THE BALANCE OF THE EQUITIES WEIGHS IN FAVOR OF BWB AND AN INJUNCTION IS IN THE PUBLIC INTEREST.

When determining the balance of equities, courts "must balance the competing claims of injury" and "consider the effect on each party of the granting or withholding" of injunctive relief. *Winter*, 555 U.S. at 24. In cases involving significant public interest, courts may consider the balance of the equities and the public interest factors together. *See Mt. Valley Pipeline,* 307 F. Supp. 3d 506, 529.. The Fourth Circuit has found that even when plaintiffs are likely to suffer irreparable harm without a preliminary injunction, courts must still determine that the balance of the equities tips in their favor and pay "particular regard for the public consequences in employing the extraordinary remedy of an injunction," because "courts of equity may go to greater lengths to give relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

Here, there is significant public interest for a number of reasons. First, WWTPs are a basic form of public sanitation service that exist to protect the public from serious diseases commonly spread through human feces, such as cholera. Inherently it is in the public interest for

[109] Volpitta Decl., Ex. G at 3-4 ¶ 9.

the City to maintain and operate the Back River and Patapsco WWTPs in good working order and to comply with their NPDES permits in order to deliver the public service of proper wastewater treatment for the public benefit. Effluent from both WWTPs impacts water quality in areas of the Back River, Patapsco River, and Baltimore Inner Harbor that are frequently used for water recreation. As detailed above, exposure to water contaminated with bacteria levels above the safe contact threshold puts people at risk for a number of serious illnesses known to cause hospitalization.[110] Additionally, dead and decaying algae growth from high levels of nutrients in the water causes a horrible stench which drives tourists and residents away from impacted waterways including the Inner Harbor.[111]

Second, a preliminary injunction is in the public interest because more than $650 million in state grant funds supported by a fee on all Maryland households and most businesses have been spent over the last several years to upgrade both plants to ENR technology. Specifically, through Maryland taxpayers' contributions to the Bay Restoration Fund and the state Biological Nutrient Removal grants, $437.5 million was invested towards upgrades to the Back River WWTP and $215.2 million towards upgrades to the Patapsco WWTP.[112] An additional, $203.1 million was provided in the State Revolving Fund and $127 million from Baltimore City's local funds for total investments of $982.8 million in infrastructure upgrades for both WWTPs, yet neither of these facilities are anywhere near operating at ENR levels.[113]

[110] *Id.* at 5 ¶ 13, *See also* MDE Bacteria Monitoring Report, Ex. O at 2-4.
[111] Volpitta Decl. Ex. G at 2 ¶ 5
[112] Grumbles Letter, Ex. E at 1.
[113] *Id.* at 1.

The Patapsco facility is currently bypassing all 34 of its denitrification filters ("DNF") in violation of its NPDES permit[114] because they are "submerged and incapable of filtration" and the "conditions indicate that the biosolids in the filters have been there for an extended period of time and the old sludge is coming up to the surface."[115] The City failed to notify MDE of this bypass in violation of its permit terms.[116] The DNF system is an "integral component in the ENR process" and this bypass is rendering the hundreds of millions of dollars of investment made by Maryland homes and businesses in this ENR upgrade completely useless.

It is in the public interest for the City to expeditiously return both plants to proper working conditions consistent with their NPDES permits so that State and local taxpayer and ratepayer dollars are not wasted.

Third, it is in the public interest because in order to meet the State's obligations under the Total Maximum Daily Load for the Chesapeake Bay, MDE has determined that removing an even greater amount of nutrient and sediment pollution beyond the already low enhanced nutrient removal levels is the preferred strategy.[117] This strategy cannot be met while the State's two largest WWTPs are discharging nutrient and sediment pollution at several times the permitted levels. Thus, for every day that the City is allowed to delay making the necessary operations, maintenance, and capital improvement upgrades to return to compliance and reduce pollution concentrations to ENR levels is another day that the City is thwarting the tremendous

[114]NPDES Permits, Ex. B at 029, Patapsco NPDES permit Section III General Condition B (5). In addition the dentrication system is integral component to the ENR process and bypassing the system is a violation of Special Condition A2 footnote 5.
[115] MDE Inspection Reports, Ex. F at 185.
[116] *Id.*
[117] Md. Dep't of Env't, Maryland's Phase III Watershed Implementation Plan to Restore Chesapeake Bay by 2025 (August 23, 2019).

efforts by numerous local, state, and federal governments to restore the water quality of the Chesapeake Bay.

The injunctive relief sought by BWB would simply require the City to take the actions required by its NPDES permits and federal and state law that it is currently failing to do. Especially in light of the significant public interest at issue, the balance of the equities tips in favor of granting the preliminary injunction.

D. ACTION BY THIS COURT IS NECESSARY BECAUSE THE STATE COURT ACTIONS HAVE FAILED TO ADDRESS THE IRREPARABLE HARM TO BWB AND DO NOT ADEQUATELY PROTECT BWB'S INTERESTS.

A preliminary injunction may be characterized as either prohibitory or mandatory. Mandatory injunctions alter the status quo, whereas prohibitory injunctions aim to preserve the status quo by preventing the non-movant from taking an action that would irreparable harm while the case is pending. *See League of Women Voters of N.C. v. North Carolina,* 769 F.3d 224, 235-6 (4th Cir. 2014). Notably, "it is sometimes necessary to require a party who has recently disturbed the status quo to reverse its actions," but "[s]uch an injunction restores, rather than disturbs, the status quo ante." *Aggarao v. MOL Ship Mgmt. Co*., 675 F.3d 355, 378 (4th Cir. 2012) (internal quotations omitted). Here, the City's failure to maintain and operate the WWTPs in compliance with the CWA has disturbed the status quo by discharging millions of pounds of illegal pollution into the Back River and Patapsco Rivers above its permitted limits. BWB seeks an injunction to restore the status quo of compliance with NPDES permit limits as soon as possible.

1. The Emergency Situation Warrants Court Intervention Because Current Conditions Will Lead to Catastrophic Failure of the Plants.

A preliminary injunction is "an extraordinary remedy never awarded as of right." *Winter*, 555 U.S. at 24. A preliminary injunction is warranted and critically important here in light of the

extraordinary nature of the failures at the WWTPs and the ongoing environmental and public health emergency that the failures are causing. As the two largest WWTPs in the state, combined they released over 4 million pounds of nitrogen and 11 million pounds of sediment in 2021, according to EPA data based on the two WWTPs' self-monitoring.[118]

At the Back River WWTP, even MDE ordering MES to temporarily oversee the plant has not been enough to instill urgency on the City's part to address the unlawful violations that are continuing to harm environmental and public health.[119] In its June 06, 2022 Report, MES stated that "**[i]n short, the Back River WWTP maintenance operations is disorganized, unfocused, and appears to lack any sense of urgency or accountability.**"[120] (Emphasis in original). MES further described the deterioration of the current working conditions at the plant resulting in a "volume and failure rate of assets [that] will inevitably increase beyond a maintenance team's ability to correct, which will inevitably result in ***catastrophic failure*** of the facility." (Emphasis added).[121] MES further explained the seriousness of the current emergency situation:

> **The violations occurring at the Back River WWTP have evolved into a situation where this is now equivalent to an extreme event, and these issues need to be addressed on an emergency basis.** The impacts on the environment are harmful to our public waters and certainly elevate responsiveness to a level that demands immediate attention and actions to remedy.[122]

(Emphasis in original).

At the Patapsco WWTP, MDE has not yet ordered MES to oversee the plant, but the most recent MDE inspection showed precipitous decline that is endangering public health and safety:

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[118] *See* the ECHO, Pollutant Loading Tool pages for the Patapsco WWTP (*Available at: https://bit.ly/3QlVxGr*) and Back River WWTP *Available at*: https://bit.ly/3ttvEdV.
[119] MES Report, Ex. A at 25.
[120] *Id.*
[121] *Id.* at 24.
[122] *Id.* at 47.

> The management of biosolids at Patapsco WWTP has become increasingly problematic because the solids processing facility, Synagro Inc. has not been able to successfully keep up with the processing of the solids that are being generated by the treatment system on a daily basis. Originally, the analysis of the sludge revealed high hydrocarbon concentrations. Now Synagro has reported that diesel range organics, gasoline range organics and acetone have also been detected in the sludge. Synagro has concerns that there is a fire hazard and the potential for an explosion associated with the levels of hydrocarbons detected in the sludge if the sludge is processed through their dryer.[123]

2. The City has Failed to Comply with Corrective Actions and Requests for Information from MDE.

Despite the City's public claims that it is addressing the problems at both WWTPs through implementation of its Strategic Plan, conditions at both WWTPs continue to deteriorate and the pollution levels are higher now than when Plaintiffs initiated this action.[124] Now, twelve months after BWB first rang the alarm bells about concern over high bacteria levels, and twelve months after MDE inspections identified numerous NPDES permit violations, the City has still failed to address many of the urgent, basic "low hanging fruit" items necessary to curb the pollution.[125]

Through numerous inspection reports over the last twelve months, MDE has articulated to the City the initial steps that must be taken to improve conditions at the WWTPs and cease pollution discharges; however, it is evident that the actions MDE has taken to date have not been successful at getting the City to act on many of the critical first steps towards compliance. Unfortunately, not even the MES takeover at the Back River WWTP has resulted in the quick improvement that was hoped. Critically, this may be due in large part to a lack of cooperation from the City. For example, MDE has noted that "MES continues to face challenges with the city

[123] MDE Inspection Reports, Ex. F at 167.
[124] DMRs, Ex. C at 1, 3-4.
[125] MES Report, Ex. A at 5.

to keep the facility maintained and equipment running continuously."[126] MDE has conducted recent inspections at the Patapsco WWTP that demonstrate that many of the same issues first identified in June of 2021 remain unresolved to date. However, as explained above, as of the date of this filing, MDE has not issued a directive or order for MES to get involved at the Patapsco WWTP.

The City's lack of responsiveness is not limited to the corrective actions needed at the WWTPs. In March, MDE sent DPW an information request letter outlining specific information for both facilities with dates and deadlines in an attempt to gather necessary information to negotiate a consent decree,[127] but the City has failed to provide answers to many of the key questions posed regarding: staffing at both plants (two separate items in the request letter); tracing of FOGs in the Patapsco sewer system; an accelerated date for completion of a biosolids handling project at the Back River WWTP; and several items related to the City's routine processes for identifying and funding capital improvement projects.

Action by this Court is warranted and necessary because the City has refused to comply with the state regulator.

3. State Court Actions are Not Mature and Do Not Guarantee Relief.

The harms occurring as a result of the City's ongoing violations of the Clean Water Act are immediate and irreparable. This Court can act immediately to address and minimize the egregious harm to public health and the environment. There is no pending action in state court to require the City to immediately address the threats. Not only have the state court actions failed to address these harms, they have, to date, remained dormant. Also, the full menu of statutory options included in the CWA are not available in state court.

[126] Back River Progress Report, Ex. L at 2.
[127] MDE Request Letter, Ex. N.

There are currently two state actions in Baltimore City Circuit Court. The first, as described above, is the MDE enforcement action against the City that was filed after BWB filed a complaint in this court. That state action has essentially been dormant. To date, there has not been a judge assigned in the case, no discovery has been initiated, and no hearings have been held. Further, negotiations toward a comprehensive consent decree to address the issues at both WWTPs ceased when MES took over the oversight of the Back River WWTP in March 2022. There is neither a guarantee nor hope at this time that there will be any progress in that state court action in the near term that would address the immediate harms suffered by BWB for which relief is sought in this federal matter. Indeed, this case is exactly why Congress included citizen suit enforcement rights in the Clean Water Act. BWB is exercising its right under the Act by bringing this case, and seeking a preliminary injunction.

The second state court action is the City's judicial appeal of MDE's Order and Directive pertaining to the Back River WWTP where the City contested the takeover by MES of the Back River WWTP.[128] BWB is not a party to that action and has no authority to intervene. BWB understands that MDE and the City announced a proposed administrative consent order on June 10, 2022 that may lead to the City withdrawing its state court appeal and may result in the issuance of a revised Directive to MES if it is approved by the City Board of Estimates. As of the time of filing this motion, the City Board of Estimates has not reviewed or approved the agreement. The requirements of that consent order apply only to the Back River WWTP, are general in nature, and are not inconsistent with the relief that BWB seeks through a preliminary injunction. Further, the requirements of that consent order do not address all of the relief sought in this preliminary injunction, including notification to protect public health and BWB members.

[128] Md. Circuit Court Docket, Ex. J at 5.

State enforcement action over the violations at both WWTPs are stalled, even though pollution levels at both plants have remained at elevated levels, with particularly egregious and worsening levels at Patapsco WWTP[129] Therefore, this Court is best situated to order the City to implement the immediate actions urgently needed to address the harm outlined herein. This Court is also in the best position to oversee the City's implementation of these actions and to hold the City accountable.

E. A NOMINAL BOND IS APPROPRIATE.

Federal Rule of Civil Procedure 65(c) requires that the movant give "security in an amount *that the court considers proper* to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c) (Emphasis added). Although a district court "is not free to disregard the bond requirement altogether," it "has discretion to set the bond amount 'in such sum as the court deems proper.'" *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 (4th Cir. 1999)*; Bragg v. Robertson*, 54 F.Supp.2d 635, 652 (S.D.W. Va. 1999) ("Nonetheless, the Court believes, pursuant to the unambiguous language of *Rule* 65(c), that it possesses significant discretion in setting the amount of the bond." (citing *District 17, UMWA v. A & M Trucking, Inc.*, 991 F.2d 108, 110 n. 2 (4th Cir. 1993))).

"In some cases, a nominal bond may suffice." *Hassay v. Mayor*, 955 F.Supp.2d 505, 527 (D.Md. 2013) (nominal bond in the amount of $1) ("Where the district court determines that the risk of harm is remote, *or that the circumstances otherwise warrant it*, the court may fix the amount of the bond accordingly" (citing *Hoechst,* 174 F.3d at 421 n. 3)); *Arkansas Best Corp. v. Carolina Freight Corp.*, 60 F.Supp.2d 517, 521 (W.D.N.C. 1999) (stating that "[c]ircumstances in the instant case warrant the posting of only a nominal bond in that Plaintiffs have shown a

[129] DMRs, Ex. C at 4.

strong likelihood of success on the merits."); *Sanderson Farms, Inc. v. Tyson Foods, Inc.*, No. RDB-08-210, 2008 U.S. Dist. LEXIS 139737, at *3 (D.Md. Apr. 25, 2008); *Maryland Dep't of Hum. Res. v. Dep't of Agric.*, 976 F.2d 1462, 1483 (4th Cir. 1992); *see West Virginia Highlands Conservancy v. Island Creek Coal Co.*, 441 F.2d 232, 236 (4th Cir. 1971) (Conservancy, a nonprofit membership corporation dedicated to preserving natural, scenic, and historic areas in West Virginia highlands, was required to post nominal $100 bond in preliminary and permanent injunction against forest supervisor and coal company to halt certain mining and timber-cutting activities in forest areas).

In the context of environmental litigation, courts in this district have found the propriety of requiring little or no security in litigation of this type and that "[i]t is common for courts in environmental cases brought by environmental groups or individuals with limited means, particularly in NEPA cases, to require little or no security." *Bragg v. Robertson*, 54 F.Supp.2d 635, 652 (S.D.W. Va. 1999) (citing Daniel Riesel, *Temporary Restraining Orders, Preliminary Injunctions, and Stays Pending Appeal in Environmental Litigation,* SA85 A.L.I.–A.B.A. 899, 955 (1996) (citing numerous cases); *see also* Charles A. Wright, Arthur R. Miller, Mary Kay Kane, Fed.Prac. & Proc.Civil 2d § 2954 (2d ed.1995)). Specifically, in public interest litigation, courts often require only a minimal bond so as not to chill suits protecting the public interest.[130]

In this case, a nominal bond in the amount of $1 is appropriate. At the outset, BWB is a non-profit, public interest group with limited financial resources. As a result, requiring more than a nominal bond would, in effect, bar BWB from exercising its rights and would frustrate meaningful judicial review. Likewise, a bond requirement in excess of a nominal bond would otherwise have a chilling effect on litigation to protect the environment and the public interest.

[130] *See* Fed. R. Civ. P. 65 Commentary.

Friends of the Earth, Inc. v. Brinegar, 518 F.2d 322, 323 (9th Cir. 1975) (reversing the district court's unreasonably high bond because it served to thwart citizen actions against a government entity).

Requiring a substantial bond in this matter would "seriously undermine the mechanisms in [environmental laws] for private enforcement" because plaintiffs would likely be unable to proceed with the case absent the grant of a nominal bond. *Friends of the Earth*, 518 F.2d at 323; *see Wilderness Soc'y v. Tyrrel*, 701 F.Supp. 1473, 1492 (E.D.Cal. 1988). Finally, as discussed above, BWB's likelihood of success on the merits weighs in favor of a minimal bond.

V. CONCLUSION

For the foregoing reasons, BWB respectfully requests the Court order the City to immediately undertake all activities in the attached proposed order to address the urgent issues identified by engineering experts and MDE regarding management of solids/sludge, and fats, oils, and grease; acquiring qualified staff; proper monitoring to assess compliance of NPDES permits. Additionally, BWB requests the Court order the City to issue public notifications to protect the health and safety of the public. The City failed to comply with previous consent orders, and failed to comply with corrective actions in MDE inspection reports for the past year, thus, this Court's oversight to ensure the City undertakes the activities outlined in the proposed order is necessary. Should this Court determine that oversight is best accomplished through a special master under Fed. R. Civ. P. 53, BWB is amenable to the appointment of a special master.

Accordingly, BWB respectfully requests this Court grant the motion for a preliminary injunction and set a nominal bond at $1.

Dated: June 13, 2022

Respectfully submitted,

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Attorneys for Plaintiff Blue Water Baltimore

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June, 2022, a copy of the foregoing Plaintiff's Memorandum in Support of Motion for a Preliminary Injunction was served on all parties by filing the same electronically with the Clerk of the United States District Court for the District of Maryland.

/s/ Martin R. Siegel

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Attorneys for Plaintiff Blue Water Baltimore

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BLUE WATER BALTIMORE, INC.	)	
Plaintiff,	)	CIVIL ACTION-LAW
	)	
v.	)	No.: 1:21-cv-03176
	)	
MAYOR & CITY COUNCIL OF BALTIMORE	)	
Defendant	)	

ORDER

AND NOW, having considered the Plaintiff's Motion for a Preliminary Injunction and the City's response to that Motion, the Court finds that the Defendant is operating the Back River WWTP and the Patapsco WWTP in violation of their NPDES permits resulting in irreparable harm to Blue Water Baltimore and an imminent threat to the environment and public health and safety. It is therefore ORDERED that the Defendant immediately implement the following activities and ensure such activities are continued as long as necessary to comply with the NPDES permits and all applicable federal and state laws:

1. **For Back River WWTP:**
   a. Solids/Sludge

      i. Improve centrifuge operations, including repairing all centrifuges, optimizing dewatering, and taking all steps to ensure that the centrifuges are properly maintained;

      ii. Remove solids that have accumulated in the primary settling tanks, the secondary clarifiers, and the denitrification filters;

      iii. Take all steps necessary to ensure that floating materials and partially treated solids do not discharge to waters of the State;

      iv. Remove and prevent the accumulation of any algae and vegetation in any unit process at the WWTP that impacts the ability of the treatment train to control solids releases to the receiving water body;

      v. Within 30 days, implement a permanent solution for the proper management, treatment, and disposal off-site of solids produced by the WWTP; and

      vi. Initiate work immediately to place more primary settling tanks in service.

b. Public Notification to Protect Public Health

i. Report all effluent violations to Maryland Department of the Environment (MDE), Baltimore County Department of Health, and Blue Water Baltimore within 24 hours of discovery and subsequently providing a letter of explanation within 5 days of reporting the violation to facilitate clear communication to entities responsible for posting warning signs in the County; and

ii. Issue public notifications online and via the existing SSO notification system when bacteria levels as monitored in the final treatment stage surpass state thresholds for safe contact.

c. Qualified Staff

i. Immediately acquire and train adequate staff to supplement existing staff and address any critical staffing shortages that exist at any unit in the WWTP; and

ii. Within 30 days, report to Blue Water Baltimore and the Court any newly acquired certifications from the State Board of Waterworks and Waste Systems Operators for staff at each unit of the WWTP and the number of new hires or newly vacant positions for each unit.

d. Monitoring

i. Immediately ensure all sampling and data reporting is conducted in accordance with all applicable guidelines, best practices, and requirements, and that any mishandled samples are discarded and reported properly to MDE.

ii. Every week, share summary results or screen capture of the data dashboard used to track daily compliance within the plant with MDE and BWB.

2. **For Patapsco WWTP:**

a. Solids/Sludge

i. Improve centrifuge operations, including repairing all centrifuges, optimizing dewatering, and taking all steps to ensure that the centrifuges are properly maintained;

ii. Take all steps necessary to ensure that floating materials and partially treated solids do not discharge to waters of the State, including, but not limited to, regularly skim the final effluent of floating solids in the chlorine contact chambers to prevent public nuisances and unpermitted discharges of partially treated materials;

iii. Take immediate action to process biosolids at a sufficient level to maintain satisfactory performance in all treatment processes, taking into consideration the backlog of solids within the system that must be removed. Within 30 days, begin to implement a permanent solution for the proper management, treatment, and disposal of solids produced by the treatment process;

iv. Ensure the proper dosing of chemicals and any other activities necessary to prevent the generation of hydrogen sulfide, which has been detected and can create hazardous conditions and damage or interfere with plant operations; and

v. Initiate work immediately to place more primary settling tanks in service.

b. Fats, Oil, Grease Mitigation

i. Within 15 days, submit to the Court, MDE and Blue Water Baltimore a report detailing all specific measures and actions taken to ensure compliance with the FOG Mitigation Plan for the year 2021;

ii. Within 15 days, concerning industrial facilities that discharge into the Patapsco WWTP sewershed, provide:

(1) any information on FOG tracking that has been done in the last year, including, who conducted it and when it was conducted;

(2) a list of all industrial facilities that the City has issued a pretreatment permit to; and

(3) for each industrial facility identified in (ii) above: the date of the last inspection; a description of the facility's pretreatment processes, and the compliance/non-compliance status.

c. Public Notification to Protect Public Health

i. Report all effluent violations to MDE and Blue Water Baltimore within 24 hours of discovery and subsequently provide a letter of explanation within 5 days of reporting the violation;

ii. Issue public notifications online and via the existing SSO notification system when bacteria levels as monitored in the final treatment stage surpass state thresholds for safe contact; and

iii. Immediately post signs in all public access points to the Patapsco River impacted by the WWTP outfall indicating that the area is known to experience high levels of bacteria that can pose a threat to human health. At a minimum, these locations include:

(1) Downtown Sailing Center
(2) Canton Waterfront Park
(3) Middle Branch Rowing Center
(4) MedStar Harbor Hospital
(5) Ferry Bar Park
(6) Dragon Paddle Boats
(7) Maryland Science Center
(8) Inner Harbor Amphitheater
(9) Swan Park
(10) Canton Kayak Club locations
(11) Fort Armistead

d. Qualified Staff

i. Immediately acquire and train adequate staff to supplement existing staff and address any critical staffing shortages that exist at any unit in the WWTP; and

ii. Within 30 days, report to Blue Water Baltimore and the Court any newly acquired certifications from the State Board of Waterworks and Waste Systems Operators for staff at each unit of the WWTP and the number of new hires or newly vacant positions for each unit.

e. Monitoring

i. Immediately ensure all sampling and data reporting is conducted in accordance with all guidelines, best practices, and applicable requirements, and that any mishandled samples are discarded and reported properly to MDE.

ii. Every week, share summary results or screen capture of the data dashboard used to track daily compliance within the plant with MDE and BWB.

3. In addition to the specific measures set forth in this Order, Defendant shall take all steps necessary to immediately come into compliance with the NPDES permits and all state and federal requirements.

4. Defendant shall provide a report to the Court within 30 days of this Order and every 30 days thereafter regarding progress on all actions listed below. The report should include 1) a summary of progress with complying with each requirement; 2) an identification of obstacles encountered in achieving compliance; and 3) steps taken to address those obstacles.

IT IS SO ORDERED.

Dated: July __, 2022

LYDIA KAY GRIGGSBY
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BLUE WATER BALTIMORE, INC., Plaintiff,	Civil Action – Law
v.	No. 1:21-CV-03176
MAYOR & CITY COUNCIL OF BALTIMORE, Defendants.	Hon. Lydia K. Griggsby

PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTION

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I. INTRODUCTION

In its response, Defendant Mayor and City Council of Baltimore ("the City" or "Defendant") frequently misdirects attention away from the relevant issue of its undisputed violations of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA") and violations of its permits under the CWA, as well as the environmental crisis those violations are causing at Maryland's two largest wastewater treatment plants ("WWTPs"). The City also attempts to minimize the impact of and avoid responsibility for the magnitude of pollution coming from the WWTPs that is posing irreparable harm to Blue Water Baltimore ("BWB") members, public health, and the environment. A preliminary injunction is necessary because the City has repeatedly shown itself unable and/or unwilling to comply with directives from the Maryland Department of the Environment ("MDE").

The relief BWB seeks in its motion for a preliminary injunction is necessary, appropriate, and consistent with findings of MDE and the City's own third-party engineers. As set forth in the revised order proposed by BWB, the requested relief would compel the City to take basic steps towards bringing the plants into compliance, including: ensuring enough competent and qualified staff to run and to maintain the WWTPs, addressing the solids and sludge issues, maintaining proper monitoring, and providing public transparency to protect public health. This relief is based on MDE inspection reports, the Maryland Environmental Service ("MES") report, and what engineers have determined to be the most pressing issues towards compliance. Contrary to the City's assertion, BWB is not asking the Court to step into the role of technical expert.[1] The alleged "lack of expertise" of this Court is irrelevant when the urgent need is accountability on the part of the City to expeditiously take steps toward compliance.

[1] Defendant Response in Opposition ("Def. Resp.") at 32.

Much of the City's response focuses on actions that MDE has taken in an attempt to correct WWTP violations. BWB does not dispute that MDE has invested time in inspecting the Back River and Patapsco WWTPs and drafting reports detailing the corrective actions necessary for permit compliance over the last year.[2] The issue is not that MDE has failed to act; the issue is that the City continues to fail to comply with MDE direction and state and federal law.

The City suggests that BWB is attempting to insert itself and this Court into "the State and City's process for restoring these plants to full compliance," implying that BWB has been an outside observer and has relied on "out-of-date information."[3] In fact, BWB was responsible for bringing the City violations to the public's attention, has been at the forefront of initiating steps towards enforcement, and continues to play an integral role in holding the City accountable for ongoing violations.[4] Further, BWB maintains an active working relationship with MDE.[5]

The City may wish to exclude BWB and attempt to characterize BWB's position as unnecessary or a nuisance, but in fact, BWB is exercising its legal right under the CWA. BWB is fulfilling an important role in representing the interests of its members and the public, and ensuring public transparency that is critical to a just outcome in this matter. *See Friends of the Earth v. Carey,* 535 F.2d 165, 172 (2d Cir. 1976) ("Congress made clear that citizen groups are not to be treated as nuisances or troublemakers but rather as welcomed participants in the

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[2] Indeed, the relief requested in this preliminary injunction is pulled from the corrective actions in the inspection reports.

[3] Def. Resp. at 2. The City asserts that BWB "inexplicably" failed to reference to engineering reports commissioned by the City. However, the City never provided these reports to BWB. BWB has since obtained copies from MDE. The reports are consistent with the MES Report, the most recent inspection reports, and the relief requested in this motion. BWB's revised proposed order reflects the latest information.

[4] *See* Plaintiff's Memorandum in Support of Preliminary Injunction ("Pl. Memo") at 31.

[5] Including weekly meetings among counsel for BWB and MDE and BWB staff sharing water quality monitoring data and accompanying MDE staff to collect simultaneous samples.

vindication of environmental interests."). Additionally, the City's request for a $5 million bond is inappropriate. Complying with the requested relief would not pose financial harm to the City as the list of actions are already necessary to cease illegal permit violations.

II. ARGUMENT

A. ACTION BY THIS COURT IS APPROPRIATE AND NECESSARY TO ADDRESS THE ONGOING ENVIRONMENTAL CRISIS AT THE BACK RIVER AND PATAPSCO WWTPS

To date, the pending state court actions have failed to address the imminent threats to human health and the environment posed by the City's ongoing violations. The City does not assert that it has completed or even undertaken the actions sought by BWB. Rather, it asks this Court to trust that at some unspecified date in the future the state court actions may result in agreements between the City and MDE that may eventually reduce the risks posed by its violations. The City's position ignores the actual and potential harms to BWB and the public.

1. Defendant's Assertion of Diligent Prosecution is Incorrect and Untimely

The City's response relies heavily on an argument that is untimely and inapposite to the present motion. The City repeatedly, but indirectly, invokes the doctrine of diligent prosecution, a jurisdictional bar to a member of the public seeking to enforce the CWA. *Chesapeake Bay Found. v. Am. Recovery Co*., 769 F.2d 207, 208 (4th Cir. 1985). This jurisdictional issue, however, is not currently before this Court. The City filed a Notice of Intent to File a Motion to Dismiss on May 17, 2022 based on an alleged lack of subject matter jurisdiction, and this Court ordered briefing that motion to be held in abeyance pending the resolution of the present motion.[6] The issue to be resolved presently is whether BWB has demonstrated that the four predicate conditions are satisfied to grant injunctive relief, not whether BWB has a right to maintain this action. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

[6] ECF No. 17.

Instead of analyzing the four factors considered by this Court to grant a preliminary injunction, the City has fabricated a new standard to describe whether a regulatory agency's enforcement activities should deprive a court of jurisdiction over a plaintiff's CWA complaint. The City repeatedly describes MDE's activities as "occupying the field" of regulatory enforcement of the violations at the two WWTPs.[7] Despite the CWA's unambiguous statutory text and the established case law guiding citizen suit prosecution under the Act, the City erroneously suggests that any involvement of BWB or this Court represents a "repudiation of the State of Maryland's robust and comprehensive enforcement approach."[8] Moreover, the City invokes MDE's enforcement actions to argue that BWB and the Court have no role in enforcing the CWA violations here.[9] For example, Defendant urges this Court "to defer to the State Sovereign" and insists that "[t]here is absolutely no need or justification for the Court to inject itself and BWB into the State and City's process for restoring these plants to full compliance."[10]

The City misconstrues the public's rights under the CWA and the jurisdiction of this Court. Congress made clear citizen groups are to be welcomed in the "vindication of environmental interests." *Friends of the Earth*, 535 F.2d at 172. As the Court of Appeals for the Fourth Circuit found, "this citizen suit provision is 'critical' to the enforcement of the CWA, as it allows citizens to abate pollution when the government cannot or will not command compliance." *Piney Run Pres. Ass'n v. Cty. Comm'rs,* 523 F.3d 453, 456 (4th Cir. 2008) (citing *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc*., 484 U.S. 49, 62 (1987).

[7] Def. Resp. at 1, 3, 4, 19, 24.
[8] *Id.* at 1.
[9] *Id*. at 18, 24-26, 29-30.
[10] *Id*. at 3, 4.

Thus, contrary to the City's suggestion, the question of who may occupy the "field" of regulatory enforcement of the CWA is determined through the process established by Congress when it created the public's enforcement rights under the Act. This process commences with the filing of a notice of intent to sue. 33 U.S.C. § 1365(b)(1)(B). The rights and relationship between the public, the regulator, and the alleged violator are then determined by regulators and prosecutorial authorities, who may choose to take control of the enforcement by initiating an action within 60 days of the notice of intent.[11]

Here, neither the state nor federal regulators made that choice and BWB thus filed its complaint with this Court on December 15, 2021.[12] Before, during, and after that 60-day period, BWB has worked in close cooperation with MDE in jointly prosecuting the violations. It is this high degree of cooperation that characterizes the nature of the enforcement action to date, with BWB and MDE jointly "occupying the field" to borrow a term from the City. BWB has brought indispensable resources and expertise, along with a unique perspective to this action.

Regardless of BWB's cooperation with MDE in the enforcement of this case, the statutory bar to jurisdiction that Congress created has not been triggered. And fundamental progress has not been made in the state action. Any argument to the contrary may be presented by the City in a subsequent motion to dismiss and should not distract from BWB's request for a preliminary injunction.

2. <u>State Enforcement at Back River has been Ineffective</u>

The City claims it is working "diligently to come into compliance"[13] at the Back River WWTP, but the facts point overwhelmingly to the contrary. The City's failure to act over the last

[11] *Id.*
[12] ECF No.1.
[13] Def. Resp. at 30.

year is precisely why a preliminary injunction is necessary. MDE ordered the MES takeover of the Back River WWTP in March 2022 because of the City's inability to safely operate and maintain the plant.[14] Nonetheless, MDE's administrative order has not been enough to compel the City into action. Instead of complying with MDE's administrative order, the City challenged the takeover in the Circuit Court for Baltimore City.[15] And rather than working cooperatively with MES, the City response to the takeover was lack of cooperation and unprofessionalism.[16]

Nearly three months after the takeover, MES noted in its June Report that the "lack of leadership" at Baltimore City Department of Public Works ("DPW") "**is a major contributor to the lack of responsiveness to the issue. . . .The lack of attendance by the DPW Director and the defensive attitude by the Bureau Head does not bode well in expecting workers to be responsible and accountable."**[17] MES characterized the state of the Back River WWTP as **"a system-wide catastrophic failure to operate and maintain this facility at every level. These include personnel, morale, licensing, and certification, hiring of competent personnel, firing of incompetent personnel, accountability and more."**[18]

The City is not providing the level of cooperation necessary for effective MES oversight. For example, MES wanted to take a "deeper dive" into where orders were in the City's procurement process and made "multiple requests of the Bureau Head and Special Projects Lead to provide a list of backlogged orders," but as of June 6, 2022, MES had not received that

[14] Pl. Mem. Ex. M at 5-7.
[15] Pl. Mem. Ex. M.
[16] Pl. Mem. Ex. A at 34 "MES has observed several operators exert only minimal effort in accomplishing tasks, and most tasks are poorly executed. **On multiple occasions, MES staff have observed staff sitting at desks on their cell phones or sleeping in their cars." (**emphasis in original).
[17] Pl. Mem. Ex. A at 48 (emphasis in original).
[18] Pl. Mem. Ex. A at 5 (emphasis in original).

information.[19] City employees are not only fighting MES, but are fighting one another: **"Interdepartmental relations have moved beyond general lack of team cohesion and into an open unwillingness to cooperate. . . . Negative behaviors ranging from sleeping on the job to verbal/physical altercations between employees have been observed both at the supervisory and subordinate level."[20]**

The City's judicial challenge of the MES takeover diverted attention from what could have been months of progress toward negotiating a long-term settlement. For the City to claim the recent agreement to resolve that judicial challenge is progress towards compliance of the permit violations at Back River WWTP is misleading. That agreement merely formalizes the status quo of MES's temporary oversight that MDE ordered in March. The City is still responsible for operating the WWTP in compliance with its permit, which it is currently not doing.[21]

The City has not maintained or operated the Back River WWTP properly for years.[22] Even with the threat of state and federal lawsuits, it is still demonstrating recalcitrance and a lack of urgency. MES notes that, "[w]ith a renewed sense of urgency, a focus from city leadership, we can quickly bring the Back River WWTP back into compliance." MES notes that it **"need[s] willing partners to embrace a cultural and structural change with a renewed commitment to this critical environmental mission."[23]** BWB's requested injunctive relief is aimed at instilling that sense of urgency.

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[19] Pl. Mem. Ex. A at 33.
[20] Pl. Mem. Ex. A at 34 (emphasis in original).
[21] *See* MDE June 2, 2022 inspection of Back River WWTP. Ex. A. The report notes, among many other issues, that the primary settling tanks previously reported by the City as functional to MDE in April are "not being operated as designed" due to components falling off. *Id*. at 17.
[22] Pl. Mem. Ex. C.
[23] Pl. Mem. Ex. A at 57 (emphasis in original).

3. State Enforcement at Patapsco WWTP has been Ineffective

Throughout its response, the City makes misleading statements about action that MDE and MES have only taken at the Back River WWTP as though they apply to both WWTPs. For example, the City's response refers to "the City's treatment plants under MDE/MES ongoing daily oversight."[24] There is currently no ongoing daily oversight of the Patapsco WWTP and MES is not on site. MDE inspection reports of the Patapsco WWTP repeatedly list the same required corrective actions– indicating that the City has failed to undertake the corrective actions from the previous month's inspection.[25] The latest discharge monitoring reports ("DMR") from the City show nitrogen levels at the highest concentrations since BWB filed its complaint.[26] One of the most significant challenges at Patapsco WWTP is handling of fats, oils, and grease (FOGs). The City entered into a consent order with MDE in 2016 to address the FOG issue and is still not in compliance with that consent order.[27] Further, the City has failed to comply with MDE's March request for information regarding the FOGs.[28]

While BWB is pleased with progress that has been made for the removal of accumulated sludge that was being improperly stored on site, those efforts differ from the sludge handling requested in BWB's motion. The requested relief targets steps needed to improve the ongoing solids processing, and getting the minimum number of primary settling tanks operational (PST). As one of the first steps in the wastewater treatment process, inadequate PST operations cause a

[24] Def. Resp. at 15.
[25] *See e.g.* Pl. Mem. F at 136-147 (corrective actions for April 2022) and 199-201 (corrective actions for May 2022).
[26] U.S. Env't Prot. Agency, Environmental Compliance History Online Effluent Chart for PATAPSCO WWTP, Permit No. MD002160, https://bit.ly/3bZ5B8v (showing total nitrogen effluent concentrations of 22.2, 23.6, and 22.1 mg/L, for March, April, and May, respectively, which are the highest values in the last 3 years).
[27] Pl. Mem. Ex. F at 212.
[28] MDE Letter to the City Regarding Status of Missing Information Requested, Ex. B at 1.

cascading series of problems throughout the WWTPs[29] and would, for example, trigger public notification requirements applicable to WWTP bypasses.[30]

The City asserts that an MDE administrative order calling for MES involvement at Patapsco WWTP is forthcoming; but no such agreement has been finalized and its efficacy, once finalized, is purely speculative. Particularly in light of the City's documented failure to work cooperatively with MES at Back River WWTP and its failure to comply with the prior FOG consent order at Patapsco WWTP, there is little assurance that an as-yet-to-be-completed administrative order will be effective enforcement.

B. DEFENDANT'S VIOLATIONS OF THE CLEAN WATER ACT ARE CAUSING IRREPARABLE HARM

The City asserts that BWB has not shown irreparable harm to its members or the environment[31] and claims that BWB's members' harms were speculative and thus insufficient to prove irreparable harm.[32] This argument fails for two reasons. First, a preliminary injunction requires the moving party to show s/he ***is likely to suffer*** irreparable harm in the absence of preliminary relief. *Winter*, 555 U.S. at 20 (emphasis added). Indeed, the purpose of a preliminary injunction is to *prevent* irreparable harm from occurring. Second, BWB members' have suffered physical injuries that were previously documented in the record.[33] They have suffered and continue to suffer irreparable harm in being denied their ability to safely recreate and enjoy the Patapsco and Back Rivers.[34]

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[29] Pl. Mem. Ex. H at 2.
[30] Md. Annotated Code, Env't Art., § 9-331.1
[31] Def. Resp. at 14.
[32] *Id*. at 15.
[33] *See* Declaration of Sara Bundy ECF No. 10-1 at 9. BWB member's child developed serious ear infection after swimming in Back River.
[34] *See* BWB Declarations Ex. C at 1-10.

1. Pollution of the Back River and Patapsco River is Irreparable Harm

Generally, irreparable harm is suffered when monetary damages are difficult to ascertain or are inadequate. *See Multi-Channel TV Cable Co. v. Charlottesville Quality Operating Co.,* 22 F.3d 546, 551 (4th Cir. 1994). The Supreme Court has found that "[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable." *Amoco Prod. Co. v. Vill. of Gambell,* 480 U.S. 531, 545 (1987). Irreparable harm should be determined by reference to the purpose of the statute being enforced. *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 824 (9th Cir. 2018). The kinds of harm that may be irreparable may be "different according to each statute's structure and purpose." *Sierra Club v. Marsh*, 872 F.2d 497, 502-03 (1st Cir. 1989). At issue here are the City's violations of the CWA, which was enacted to "restore, and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C.§ 1251. Pollution of navigable waters may be considered as irreparable harm because of the difficulty in proving monetary damages. *Amoco,* 480 U.S. at 545.

The City's ongoing illegal violations of its permits are well-documented, and the irreparable harm is actual and imminent. As to the Back River, the City claims that "elevated instream bacterial levels" are "a result of runoff from land and not discharges from the Back River plant" and that the Back River WWTP was "at all times, compliant with its bacteria limit."[35] This is false; the City's own water quality monitoring data prove otherwise. According to the City's own self-reported data, the Back River WWTP has exceeded the permitted bacteria limit 3 separate times since 2021: twice in April 2021 for outfall 001 and 002, and once for

[35] Def. Resp. at 16.

Outfall 002 in October 2021.[36] The April exceedances are noted in MDE's report of June 16, 2021.[37]

The City further asserts that because bacteria concentrations are sometimes higher upstream of the WWTP than downstream, the Back River WWTP must not be contributing to the elevated levels found downstream of the plant.[38] This is nonsensical. The fact that there might be other sources of pollution of the Back River does not provide a defense to the City's pollution from the WWTP. *See Am. Canoe Ass'n v. Murphy Farms, Inc.*, 412 F.3d 536, 539-40 (4th Cir. 2005).[39] Additionally, these bacteria results are to be expected. There are known leaks in the sewage pipes leading to Back River WWTP that cause sanitary sewage overflows (SSOs) in Back River tributaries, such as the Herring Run.[40] BWB routinely records elevated levels of bacteria upstream of WWTPs and expects some of the lowest levels of bacteria in the region near the outfall of a WWTP because, if a WWTP is working as intended, it would have adequately treated the bacteria.[41]

MDE inspectors continue to report the City is failing to follow adequate monitoring procedures, thus the results of effluent monitoring might be inaccurate.[42] Even assuming the data are accurate, the City's own readings from inside the Back River WWTP show that there have

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[36] U.S. Envt'l Protec. Agency's ECHO Database, Back River WWTP Effluent Charts. *Available at:* https://echo.epa.gov/effluent-charts#MD0021555. (Visited July 7, 2022).
[37] Pl Memo. Ex. F at 99.
[38] Def. Resp. 16.
[39] Not only does the CWA create "a regime of strict liability for violations of its standards" but, of more relevance, a discharge of such magnitude is undoubtedly a major contributor of bacteria pollution in the Back and Patapsco Rivers. *Am. Canoe Ass'n* 412 F.3d at 540.
[40] In fact, the City is currently under a consent decree with the U.S. EPA and MDE to repair the pipe infrastructure in order to eliminate the SSOs. *See U.S.A v. Mayor and City Council of Baltimore Maryland,* U.S. District Court for the District of Maryland 1:02-cv-01524-JFM
[41] *See* Ex. C at 2.
[42] Pl. Mem. Ex. F at 137, 195, 200; see also Pl. Mem. Ex. A at 52-53.

been days where the effluent discharge exceeds the safe contact threshold by several orders of magnitude.[43] The Back River WWTP's permit limit for bacteria is written as a monthly average, thus it can discharge effluent with bacteria levels above the safe contact standard for days without violating the permit. The issue here, however, is that the data show that actual discharges frequently exceed the safe contact standard, making public notification critical for the protection of public health.

The City is required to monitor and report pollution levels in the *liquid* effluent it discharges through DMRs. Any discharge of a solid is a violation of its permit, but the pollution concentration within these solids are not captured in the DMRs.[44] Thus, the DMRs are based on monitoring of the wastewater, but the solids containing high levels of bacteria and other pollutants are going right through the system.[45] The fact that solids are regularly discharged demonstrates an incredible failure at multiple stages of processing at the Back River WWTP.

The City asserts that MDE's health advisory for avoiding contact with water downstream of the Back River WWTP "was not related to Back River's fully compliant bacteria discharges."[46] Again, the Back River WWTP's bacteria discharges were not always fully compliant.[47] Also, MDE's public notice of the health advisory details both the health advisory and the status of MES oversight to ensure the City "ceases all illegal discharges from the plant."[48] The notice states: "MDE began weekly sampling on April 19 to collect bacteria samples from the river and at the end of the WWTP outfall. The results of that sampling, received April

[43] Md. Dep't of the Env't Back River WWTP Daily Effluent Data Ex. D.
[44] Pl. Mem. Ex. B at 10, 50.
[45] Pl. Mem. Ex. F at 36, 88.
[46] Def. Resp. at 16.
[47] *See supra* n. 37.
[48] Jay Apperson, Public health advisory and progress report issued for Back River, Md. Dep't of the Env't (Apr. 22, 2022), https://bit.ly/3NKxZbC

20, showed bacteria levels above the state water contact standard for samples taken from three of four sampling locations."[49] Moreover, the MDE Secretary attributed the advisory to the Back River WWTP stating, "[t]he health advisory is a necessary and protective step in our broader effort to stabilize the situation and dramatically improve the operation and maintenance of Baltimore's world-class wastewater asset."[50] MDE's advisory has remained in effect.[51]

In addition to the erroneous claim that "the bacteria advisory was not related to the City's discharges," the City also asserts there has been no harm because the advisory "has not recurred."[52] This, again, is untrue. Different state and local agencies have authority to issue their own health advisories. The April 2022 Public Health Advisory was issued by MDE and has continued to remain in effect. Simultaneously, Baltimore County Department of Health and Human Services posted signs downstream of the WWTP based on its own separate protocols and later removed the signs. The MDE health advisory, however, remains in effect "until further notice."[53] Further, On July 1, 2022 Baltimore County Department of Health and Human Services issued another advisory for areas adjacent to and downstream from the Back River WWTP, due to high levels of bacteria from recent sampling. A spokesperson for the County stated the County is working to "post informational signs at Cox's Point and other locations warning swimmers against entering the water with open wounds and urging them to wash after contacting the water, in addition to warning of elevated bacteria levels following rainstorms."[54]

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[49] *Id*.
[50] *Id. See also* Scott Dance, *Back River is Unsafe For Any Human Contact, Maryland Environment Officials Declare Amid Wastewater Plant Problems,* Baltimore Sun (Apr. 22, 2022), https://bit.ly/3yOvxfT.
[51] *Supra* n. 48. *See also* Ex. C at 3 ¶ 6.
[52] Def. Resp. at 21.
[53] *Supra* n. 48. *See also* Ex. C at 3 ¶ 6.
[54] Ngan Ho, *Baltimore County Issues Water Quality Advisory for Back River at Cox Point Park*, Baltimore Sun (Jul. 2, 2022, 4:54PM), https://bit.ly/3nPzKtD.

The City does not deny the Patapsco WWTP is causing harm. In the last three months, the total nitrogen levels in the effluent from the Patapsco WWTP have been at the highest levels since BWB first made public its concerns about pollution violations at the Patapsco plant.[55] High nitrogen levels are scientifically known to cause algae blooms which in time cause eutrophication, leading to low dissolved oxygen levels and fish kills.[56] Despite the City's assertion to the contrary, there is nothing speculative about the imminent and substantial threat to water quality health from millions of pounds of excess nitrogen discharged into the Patapsco and Back Rivers.[57] Since May 2021, the Patapsco WWTP has exceeded the monthly average enterococci bacteria limit more than 50 percent of the time.[58]

2. BWB Members Have Suffered and Continue to Suffer Irreparable Harm

BWB Members and the public have suffered and continue to suffer irreparable harm. Due to the undisputed permit violations from both WWTPs, BWB members have lost the ability to safely recreate in the Patapsco and Back Rivers and have lost their aesthetic enjoyment of these waters.[59] The ongoing pollution is hindering the recreational activities of BWB members and the public.[60] One member's twelve year old son became ill with antibiotic resistant ear infection that doctors attributed to swimming in the water downstream of the Back River WWTP.[61] Members have been and continue to be unable to enjoy swimming, kayaking, and water skiing where they

[55] U.S. Env't Prot. Agency, *supra* note 26.
[56] Ex. C at 3 ¶ 7.
[57] For more information on the substantial impact of nutrient pollution exceedances on progress toward meeting the 2025 Chesapeake Bay Total Maximum Daily Load pollution reduction target, *see* Rachel Felver, *Watershed Jurisdictions Help Lower Nutrient and Sediment Pollution Entering the Bay*, Chesapeake Bay Program (June 22, 2022), https://bit.ly/3AuqtyF
[58] U.S. Env't Protec. Agency's ECHO Database, Patapsco WWTP, *Available at:* https://bit.ly/3Rt63MC (visited July 7, 2022).
[59] Ex. C at 1-10. *See also* Declarations of Sara Bundy and Rodette Jones ECF No. 10-1.
[60] *Id. See also* Declaration of Maryland Delegate Robin Grammer Ex. F at 1-3
[61] *See* ECF No. 10-1 at 9.

would come into contact with the water.[62] Members have ceased their fishing and crabbing practices due to concern of becoming ill.[63] Very recently, a child was hospitalized for a serious methicillin-susceptible *Staphylococcus aureus* (MSSA) bacterial infection after cutting his foot and coming into contact with the water in Back River.[64] In the Back River an over-abundance of midge insects are causing many residents to be unable to enjoy being outside their own home.[65]

C. BALANCE OF EQUITIES TIPS IN FAVOR OF GRANTING PRELIMINARY INJUNCTION AND PUBLIC INTEREST IS SERVED BY GRANTING THE PRELIMINARY INJUNCTION

The amount of pollution entering the Back and Patapsco rivers cannot be overstated. According to the EPA's Pollutant Loading Tool these two WWTPs represent only 1.5 percent of the public WWTPs in Maryland but contribute 67 percent of the total nitrogen pollution in 2022.[66] The average daily amount of nitrogen pollution from these two plants is nearly ten times the annual level of the median WWTP in Maryland, or about the same amount as is discharged by the City of Salisbury's WWTP in an entire year.[67]

The balance of equities weighs in the favor of granting a preliminary injunction because each day that the City fails to repair and maintain equipment or infrastructure causes further damage to critical components of both WWTPs, harms aquatic ecosystems, endangers the public health, and deprives BWB members and the public ability to safely enjoy the Patapsco and Back

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[62] Ex. C at 1-10. *See also* Declarations of Sara Bundy and Rodette Jones ECF No. 10-1.
[63] Ex. C at 5-9.
[64] Ex. C at 3. The child developed septic arthritis in his hip as a result of his MSSA infection, which has been detected in mid-atlantic wastewater treatment plants *See* R. Goldstein et. al., *Methicillin-Resistant Staphylococcus aureus (MRSA) Detected at Four U.S. Wastewater Treatment Plants*, 120 Env't Health Persp. 1151 (2012), https://bit.ly/3aqyABx.
[65] Ex. F at 1-3. *See also* Declaration of Desiree Greaver ECF No. 10-1 at 6.
[66] The U.S. Environmental Protection Agency's Water Pollutant Loading Tool can be found on its ECHO database, *Available at*: https://bit.ly/3NQXIPB (visited July 5, 2022).
[67] *Id.*

Rivers. There is no added burden for the City because the relief requested is based on corrective actions already identified by MDE or requirements in state law.

The City acknowledges the public interest is served by enforcing the CWA, but suggests that "absent proof of the inadequacy of state enforcement, the overall public interest . . . may be better served with active enforcement by the state rather than a federal court."[68] BWB disagrees. First, almost no action has been taken in state court.[69] Second, and more importantly, there is overwhelming evidence about the inadequacy of actions taken to date. The City consistently proves it is unable and/or unwilling to comply with the actions MDE and MES request in order to implement a swift course correction at the Back River, and almost no significant pollution reduction progress at Patapsco WWTP. Meanwhile communities are impacted by the pollution.[70]

The City suggests the requested relief would be "intrusive" or otherwise counterproductive by conflicting with what MDE or MES are already doing.[71] MES is not present at the Patapsco WWTP, and while the City argues that MES may be on site "shortly", that is speculation and ignores the lengthy delays that have plagued any attempt to bring the WWTPs back into compliance over the last 12 months. Most of the City's arguments about the enforcement efforts of MDE, MES, or the City only apply to the Back River WWTP.

Even if MES was immediately present at both WWTPs, it would be difficult to have any confidence that presence would bring about swift progress without the intervention of this Court, given that the MES Report exhaustively detailed the need for greater resources, oversight, accountability, and cooperation by the City.[72] For example, MES noted a number of "critical

[68] Def. Response at 24.
[69] Pl. Mem. Ex J.
[70] Ex. C at 1-10. *See also* Ex. F.
[71] Def. Response at 4.
[72] Pl. Mem. Ex. A.

factors" that are still required after months of MES involvement, with many "basic needs" remaining, including "effective leadership".[73]

Despite months of effort by MES and numerous other contractors, the MES report compellingly documents that the current efforts alone are insufficient, because of the enormity of the task at hand and the lack of accountability of the City. As MES stated, "the Back River WWTP maintenance operation is disorganized, unfocused, and appears to lack any sense of urgency or accountability."[74] MES noted an open unwillingness to cooperate. [75] The urgency for judicial intervention is underscored by the "greatest concern" of MES, which is "the lack of attention toward site and employee safety."[76] MES noted that items for which the City was cited by a Maryland Occupational Safety and Health inspector in 2021 were still being ignored.[77] MES noted the City was not fulfilling its "duty to prevent employee exposure to biohazards and bloodborne pathogens associated with human waste" due to the observed: "[s]ludge spills, sewage overflows and leaking equipment, including pumps located indoors and outdoors are attracting wildlife, rodents, insects, and birds inside buildings. . . . [v]isible raw sewage, sludge material and used hygiene products. . . throughout areas of the treatment process.[78]

The City's defiance should not be a surprise, as it has openly ignored MDE requests and the corrective actions noted by the MDE inspector for many months over the course of this enforcement action.[79] Even the most vigorous efforts of MDE or MES will not be enough if the City lacks the willingness or ability to comply with basic requests.

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[73] *Id.* at 14.
[74] *Id.* at 33.
[75] *See supra,* note 16.
[76] *Id*. at 35.
[77] *Id.* at 40.
[78] *Id*. at 41.
[79] Pl. Mem. at 8-11.

Moreover, the only relief BWB requests not already required of the City is for increased transparency of effluent monitoring data for both plants, and for posting warning signs to protect the public in areas impacted by the Patapsco WWTP.[80] These requests require minimal burden or costs for the City with a significant positive impact to protect public health. It is unfortunate the City would fight against warnings that could prevent the type of illness known to occur when people are exposed to fecal bacteria.[81] The City suggests, but offers no proof, that the effluent from the Patapsco WWTP, which discharges upwards of 80 million gallons of effluent a day into a tidal waterway, could not possibly be contributing to elevated bacteria levels in the locations listed in the proposed order.[82] It is undisputed that the public uses these locations for recreational activities, which puts them into contact with the water, and that these areas experience intermittent high levels of human fecal bacteria, far above the safe contact standard.[83]

The City is responsible for both leaking sewage pipes leading into the WWTPs and the effluent pipes leading out of the WWTPs. It should be proactively posting warning signs on City property to protect the public and working with relevant agencies to ensure signage is posted on County property. Every discharge permit imposes the duty upon the permit holder to comply with all "requirements" of the water pollution control subtitle.[84] This statute established a public notification process for any "treatment plant bypass that results in the direct or potential discharge of raw or diluted sewage into the surface waters or groundwaters of the State."[85] The

[80] The City erroneously claims that BWB seeks to have the City post signs on Baltimore County property, but the original proposed order makes no such request. Instead, BWB seeks to increase communication between the City, County, and MDE.
[81] *See* Ex. C at 2 ¶ 4.
[82] Def. Resp. at 23.
[83] Pl. Mem. Ex. G at 5-6 para ¶14-17.
[84] Md. Annotated Code, Env't Art., § 9-324.
[85] Md. Annotated Code, Env't Art., § 9-331.1. Including posting "in Spanish and English at the location of the ... treatment plant bypass."

permits for both WWTPs define a bypass as "the intentional diversion of pollutants from any portion of a treatment or collection facility."[86] Thus, any time the City has intentionally acted to place excess sludge or solids in a tank or taken a treatment unit offline due to disrepair and that causes raw or partially treated sewage to be discharged, the City must comply with the statutory public notification requirements. This is consistent with the overarching purpose of Maryland's water pollution control law "to protect ... public health, safety, and welfare."[87]

Finally, the City must answer how the requested relief would be counterproductive, when the majority of items are direct references to corrective actions listed in MDE or MES documents.[88] For the most part, these are repairs that the City should have already completed or will have to complete to achieve compliance. At worst, an order of this Court might result in a situation where the City can respond that it is already in compliance with one or more of the items. No harm to the public interest would occur in that situation. And, importantly, the City has made no such assertion in its response. It is difficult to comprehend how any of the requested relief would do anything but benefit the public interest by either requiring the City to take action that they are already required to take, or providing greater transparency to the public about pollution from the WWTPs or their potential impact on human health.

The City references the potential impact on its bond ratings as a reason to deny the requested relief.[89] In fact, the opposite may be true. The City warns that injunctive relief would "rattle the bond rating agencies."[90] First, this unsubstantiated allegation is irrelevant in this preliminary injunction proceeding. Second, the City neglects to mention that when S&P Global

[86] *See, e.g.,* Permit 15-DP-0581, Part I.B., Pl. Mem. Ex B. at 44.
[87] Md. Annotated Code, Env't Art., § 9-314.
[88] Pl. Mem. Ex. A; Pl. Mem. Ex. F.
[89] Def. Resp. at 27.
[90] *Id.*

Ratings issued a report on April 6, 2022 about Baltimore's wastewater bonds, it was "the potential for catastrophic risk and public health implications" that had the rating agency rattled – not enforcement actions to correct the violations that were causing that "catastrophic risk."[91] It is misleading to suggest that this Court ordering the City to take actions that regulators have requested would do anything but assuage the concerns of the credit rating agencies, when the rating agency suggested work that "expedites remediation efforts" would be supportive.[92]

III. CONCLUSION

Immediate action by this Court is essential to ensuring the health and safety of BWB's members, the public at large, the Back River and Patapsco Rivers ecosystems, and the Chesapeake Bay as a whole. BWB maintains that enforcement has not been sufficient as to either WWTP and requests injunctive relief for both facilities.

Dated: July 8, 2022

Respectfully submitted,

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[91] S&P Global Ratings, Rating Action Ex. E at 2.
[92] *Id*.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BLUE WATER BALTIMORE, INC.	)	
	)	
Plaintiff,	)	
	)	Civil Action No.: 1:21-cv-03176-LKG
v.	)	
	)	
MAYOR & CITY COUNCIL OF BALTIMORE	)	
	)	
	)	
Defendant.	)	

PLAINTIFF'S SUPPLEMENTAL BRIEF ON IRREPARABLE HARM
IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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I. INTRODUCTION

Pursuant to Orders of this Court dated July 21, 2022 and July 27, 2022, Plaintiff Blue Water Baltimore ("BWB") files this supplemental brief to further describe the irreparable harm that it will suffer in the absence of an Order granting its requested relief. Specifically, BWB seeks to abate or minimize the harms caused by Defendant Mayor and City Council of Baltimore's ("City") related to ongoing violations and deficient operations at the Back River and Patapsco wastewater treatment plants (collectively "WWTPs").[1]

The matter before this Court is an extraordinary situation. For well over a year, the City has been operating the WWTPs in significant violation of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq*. (hereafter the Clean Water Act ("CWA")) and the conditions and limitations of Permit No. MD0021601 (State Permit 15-DP-0580) ("Patapsco Permit") and NPDES Permit No. MD0021555 (State Permit 15-DP-0581) ("Back River Permit"), issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342. When private industrial facilities violate their Clean Water Act permits in defiance of state and federal laws for months on end, the Maryland Department of the Environment ("MDE") has issued "stop work" orders to cease operations until a facility is capable of operating within its permitted limits. However, in the present case, the permittee is a public entity providing the vital public service of sewage treatment, and thus the state can no sooner issue a stop work order for the WWTPs than it can tell the public to stop using and flushing toilets.

Wastewater treatment plants exist to safeguard public health from a host of illnesses that are carried through pathogens in human waste and to ensure the environment is not degraded.

[1] *See* Pl. Compliant ECF No. 1. *See also* Md. Dep't of Env't. Inspection Report July 08, 2022 ("Patapsco 7/8/22 Inspection Report") at 5, ECF No. 36 at 8; MD Dep't of Env't Inspection Report for the Back River WWTP July 28, 2022 ("Back River Inspection Report") Ex. D.

The violations at the WWTPs and their impact on human health and the environment are well-documented. Alarmingly, the City continues to exhibit a lack of urgency in addressing pollution violations and the irreparable harm the WWTPs are causing the environment and the public. Rather than stepping up to expeditiously resolve the issues, the City instead makes excuses for why the violations are occurring, and continues to delay and ignore requests, deadlines, and corrective actions set forth in the MDE inspection reports.

The pollution violations and the unresolved deficiencies in operations of the facilities noted by MDE, the Maryland Environmental Service ("MES"), and independent engineers continue to cause irreparable harm to BWB, its members, the public, and the environment. Specifically, the current operations of the WWTPs pose significant risks to public health and the environment and severely limit the ability of BWB's members to recreate or participate in BWB events in the waters in the vicinity of the WWTP. A preliminary injunction is necessary to address the irreparable harm.

BWB's previous filings have set forth the legal prerequisites for the issuance of a preliminary injunction and will not be repeated here.

II. ARGUMENT

A. Courts Have Widely Accepted That the Types of Harms Being Suffered by BWB and its Members Are Irreparable.

The United States Supreme Court has long recognized that "[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.* irreparable." *Amoco Production Co. v. Village of Gambell, Alaska,* 480 U.S. 531, 545 (1987). Because of this, "[i]f such injury is sufficiently likely … the balance of harms will usually favor the issuance of an injunction to protect the environment." *Id.* Excessive pollution from wastewater treatment plant discharges are just the "type of actual environmental

harm that the courts have found to be irreparable." *Am. Canoe Ass'n v. City of Wilson Wastewater Treatment Plant*, Consolidated Cases 5:96-CV-838-BR(2), 5:97-CV-471-BR(2), 5:97-CV-665-BR(2), 1998 U.S. Dist. LEXIS 7766 (E.D.N.C. Mar. 31, 1998).

In *Am. Canoe Ass'n*, the plaintiffs alleged hundreds of WWTP violations. *Id.* at 6. These violations included exceedances of permit limits for pollutants like Ammonia (as Nitrogen), Biochemical Oxygen Demand, Cyanide, Fecal Coliform Bacteria, Mercury, Lead, Toxic Suspended Solids, and Toxicity. *Id*. The court found that, "the history of violations and their effects on the receiving waterways shows that future harm is sufficiently likely and would be irreparable under *Amoco*." *Id*. at 26.

Although the Back River and Patapsco WWTPs have had numerous permit violations, the number of permit violations or pollutants being discharged does not need to be great for a court to issue an injunction. In fact, in a series of cases involving CWA permit limit violations by coal mine operations, the effects of a single pollutant largely formed the basis for a court to issue an injunction. In *Ohio Valley Environmental Coalition v. Maple Coal Co.*, 808 F.Supp. 2d 868, 899 (S.D. W.V. 2011), the court determined that the plaintiffs made the requisite showing that they are entitled to injunctive relief where the defendant mining company caused frequent violations of the selenium limits in its discharge permit. Similarly, in *Ohio Valley Environmental Coalition, Inc. v Hobet Mining, LLC*, 723 F. Supp. 2d 886 (S.D. W.V. 2010), the court noted "the toxic nature of selenium" to aquatic species in finding there was irreparable harm.

The condition of the waterways impacted by the permit violations and the purpose behind the statute in question were both critical in the courts' analyses in these cases. For example, the court in *Hobet* noted that the water quality of the Mud River watershed, like the Chesapeake Bay watershed, was designated by regulators as impaired under the Clean Water Act by the same

pollutants being illegally discharged. In addition, a Total Maximum Daily Load ("TMDL") had been established to cap the amount of pollution that could be discharged into that watershed. *Id.* at 907. West Virginia regulators specifically devised Hobet Mining's permit to be in "conformity with the TMDL." *Id*. at 897. Thus, the operation was not just violating the legal limit, but in doing so, was necessarily "contributing to the degradation of the Mud River watershed in the form of excess selenium pollution" that was, therefore, "sufficient to establish irreparable harm." *Id*. at 924. Such degradation of water quality standards, the court found, runs counter to the "purpose of the [Clean Water Act]." *Id.* at 901. As described below, both the Patapsco WWTP and Back River WWTP discharge permits were also drafted to be in conformity with the applicable TMDLs for the receiving waterways.

Given that irreparable harm is "determined by reference to the purposes of the statute being enforced," it is not surprising that numerous courts have emphasized the importance of evaluating the impact of violative discharges of pollution on the water quality standards of the affected receiving water. *See Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 886 F.3d 803, 824 (9th Cir. 2018). Where "bodies of water are currently violating the state water quality standards" because of an unlawful discharge of pollution into such waters, courts will find such harm irreparable. *See W. Va. Highlands Conservancy v. Lexington Coal Co., LLC*, No. 3:19-0573, 2021 U.S. Dist. LEXIS 237758, at *3 (S.D. W. Va. Dec. 13, 2021); *see also Ohio Valley Envtl. Coal. v. Fola Coal Co., LLC*, No. 2:13-21588, 2016 U.S. Dist. LEXIS 73904, at *37 (S.D. W. Va. June 7, 2016). "Because these discharge restrictions are set at the level necessary to protect the designated uses of the receiving waterways, their violation necessarily means that these uses may be harmed." *Ohio Valley Envtl. Coal., Inc. v. Apogee Coal Co., LLC*, 744 F.

Supp. 2d 561, 568 (S.D. W. Va. 2010) (*citing Friends of the Earth, Inc. v. Gaston Copper Recycling Corp*., 204 F.3d 149, 157 (4th Cir. 2000)).

B. The Back and Patapsco Rivers and Chesapeake Bay Are Substantially Impaired by the Same Pollutants as Those Illegally Discharged by the WWTPs.

Like the many other "arteries of the Chesapeake Bay," the Back and Patapsco "rivers and estuaries are complex, interconnected ecosystems." *Norfolk S. Ry. v. City of Roanoke*, 916 F.3d 315, 325 (4th Cir. 2019) (Wilkinson, J., Concurring). Although the term "river" is used, these are complex tidal ecosystems with water flowing in both the landward and seaward directions.[2] These two waterways are also, unfortunately, among the most polluted of the Chesapeake Bay tributaries.[3] Accordingly, all three branches of government at multiple levels have long recognized that "[r]estoring damaged waters like the Chesapeake Bay requires sustained effort, entailing cooperation and coordination among the federal government, "[s]tate and local governments, the enterprise of the private sector, and . . . all the people who make this region their home." *Norfolk S. Ry*. 916 F.3d at 323 (*citing* Exec. Order No. 13508, 74 Fed. Reg. 23099, 23100 (May 12, 2009)); *see also Md. Dep't of the Env't v. Cty. Comm'rs*, 465 Md. 169, 182-183 (2019). The Chesapeake Bay and Back and Patapsco rivers have each been put on a TMDL "pollution diet" for numerous pollutants, including nutrients like nitrogen and phosphorus, sediment, and in the case of the two rivers, numerous metals, chemicals, and other pollutant parameters.[4]

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[2] Declaration of Dr. Lora Harris ("Harris Decl."), Ex. A at ¶ 7.
[3] *Chesapeake Bay Eco Health Report Card*, University of Maryland Center for Environmental Science, Available at: https://ecoreportcard.org/report-cards/chesapeake-bay/bay-health/. (Visited August 19, 2022).
[4] *Maryland Waters with TMDL Documents (A-L)*, Md. Dep't of the Env't, Available at: https://mde.maryland.gov/programs/water/TMDL/Pages/sumittals_m-z.aspx. (Visited August 9, 2022).

As a consequence of these TMDLs, MDE crafted discharge permits for the Back River and Patapsco WWTPs with not only numeric effluent limits that incorporate the TMDL allocations, but also narrative limits and conditions to support achievement of the TMDL and, consequently, restoration of these waters and attainment of their water quality standards.[5] The numeric and narrative limits and conditions are among the most important terms of the discharge permits for each WWTP because failure to meet these terms necessarily results in a violation of the water quality standards established by the state and mandated by federal law. *See* 33 U.S.C. § 1313; *see also* Md. Code Ann., Envir. § 9-314.

The pollution limits in the discharge permits for the Patapsco and Back River WWTPs are of particular ecological importance because of the sheer size of these WWTPs, the scale of potential pollution, and relative contribution to the overall pollution load in the Back and Patapsco rivers, Chesapeake Bay, and even other waters.[6] Moreover, the permits are designed to protect unique, complex, and particularly vulnerable aquatic ecosystems. For example, unlike the Chesapeake Bay and other estuaries, the Patapsco River contains an unusual "three-layered circulation pattern" that has the effect of pushing both waters at the surface and bottom waters toward the Inner Harbor.[7]

The unique hydrodynamics of these tidal waters not only have social, economic, and public health implications, but also create additional challenges for trying to mitigate the

[5] Pl. Mem. Ex. B at 10, 50 ECF No. 24.
[6] Declaration of Dr. Ryan Woodland ("Woodland Decl.") Ex. B at ¶ 11. ("Because discharges are distributed by estuarine and tidal currents throughout the Patapsco tributary, including the Inner Harbor, there is also the real risk that the biodiversity we documented at the other sites (Bear Creek, Stony Creek, Middle Branch, Rock Creek, Curtis Creek) could decline and look more similar to the Inner Harbor data should hypoxic conditions increase.").
[7] Harris Decl. Ex. A at ¶ 7.

ecosystem's low-oxygen conditions, also known as hypoxia.[8] Hypoxia is "one of the most pervasive" problems for estuaries, and coastal estuaries are a "particularly vulnerable" type of aquatic ecosystem.[9] Consequently, a waterbody like the Patapsco "is particularly vulnerable to the destabilizing effects of hypoxia" with significant impacts on aquatic species and the food chain.[10] These ecosystem pressures also exert an outsized impact on the human communities living near the Patapsco because of the notable role of sustenance fishing there.[11]

For the broader effort to restore the Chesapeake Bay, these two WWTPs also hold a particular importance. For example, according to the Baltimore County Watershed Implementation Plan, two-thirds of all nitrogen pollution generated from within the county and discharged to the Chesapeake Bay originates from a single source - the Back River WWTP.[12] In Baltimore City, the contribution to overall nitrogen pollution was estimated to be even greater, with about four-fifths of all nitrogen from the City discharged through the Patapsco River to the Chesapeake Bay originating with the Patapsco WWTP.[13]

The proportion of pollution from these two WWTPs to their respective rivers varies depending on the particular pollutant in question and fluctuates considerably over time. For example, MDE's recent efforts to conduct routine sampling for bacteria pollution at or near outfall 001 of the Back River WWTP revealed that on various dates in 2022 the bacteria levels

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[8] *Id*. at ¶ 11-14.
[9] Woodland Decl. Ex. B at ¶ 4.
[10] *Id*. at ¶ 10.
[11] *Id.* at ¶ 12.
[12] Phase II Watershed Implementation Plan, Baltimore County, *Available at*: https://mde.maryland.gov/programs/water/TMDL/TMDLImplementation/Pages/WIPPhaseIICountyDocuments.aspx. (Visited August 9, 2022).
[13] Phase II Watershed Implementation Plan, Baltimore City, *Available at*: https://mde.maryland.gov/programs/water/TMDL/TMDLImplementation/Pages/WIPPhaseIICountyDocuments.aspx. (Visited August 9, 2022).

detected near the outfall has at times exceeded levels sampled at upstream and downstream locations, while at other times the sampled levels near the outfall contain lower concentrations of bacteria.[14] These patterns are dictated by the "unusual" hydrodynamics of these water bodies, whereby tidal surface water routinely moves in both directions.[15] Such patterns make these tidal water bodies "unfortunately, vulnerable to transporting contaminants landward and extending residence times."[16]

At the Patapsco WWTP, bacteria levels at the effluent pipe measured by the City and bacteria levels measured in the Patapsco River near the outfall pipe by BWB also show highly variable levels of bacteria that sometimes exceed levels sampled upstream and downstream. Again, this is unsurprising given this hydrodynamic pattern of water flowing both up toward the Inner Harbor and out toward the Chesapeake Bay.[17]

Overall, for many different types of pollutants these two WWTPs are either the dominant source, or a significant contributor of the total pollution in these two rivers.[18] In other words, as goes pollution controls at these WWTPs, so goes restoration of these rivers and the protection of those who fish, swim, or recreate in or on them.[19]

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[14] *Sampling Results Through July 27*, Maryland Department of the Environment, *Available at*: https://mde.maryland.gov/programs/water/Compliance/Documents/Back%20River%20Sampling%20Results%20through%20July%2027%202022.docx.pdf. (Visited August 9, 2022).
[15] Harris Decl. Ex. A at ¶ 8.
[16] *Id.*
[17] *Id.* ("This is a concern to consider around the illegal Patapsco effluent discharge.") *See also* Declaration of Dr. Jeremy Testa ("Testa Decl.") Ex. C at ¶ 9.
[18] Harris Decl. Ex. A at ¶ 7-8, 22. (The Patapsco is "a tributary where point sources are particularly important.")
[19] Testa Decl. Ex. C at ¶ 4. ("Both systems have achieved dramatic reductions in nitrogen and phosphorus pollution over the past 40 plus years that are largely attributable to improvements in wastewater treatment plant technologies and the will to implement these upgrades at great cost across the watershed.")

C. The Pollution from the Back River and Patapsco WWTPs is Directly Causing Irreparable Harm to BWB Members and the Public at Large.

As detailed in Plaintiff's Memorandum in Support of the Motion for Preliminary Injunction and accompanying declarations, the staff and members of Blue Water Baltimore have numerous professional, aesthetic, recreational, personal, and financial interests in cleaner water in the Back and Patapsco rivers.[20] Generally, the likelihood of irreparable harm to healthy aquatic environments "necessarily means harm" to a plaintiff's members' interests. *See*, *e.g.*, *Sierra Club v. United States Army Corps of Eng'rs*, 645 F.3d 978, 995 (8th Cir. 2011). This is particularly relevant in the present case where a disproportionate share of pollution to these ecosystems comes from just a few sources of pollution that are illegally and, in some cases, significantly exceeding permit limits.

1. Illegal Pollution at Patapsco WWTP is Causing Irreparable Harm to BWB and its Members.

In the areas surrounding the Patapsco WWTP, Baltimore Harbor Waterkeeper, Alice Volpitta, is concerned for her own safety, that of her staff at BWB, and members of the organization and local communities, because of the high levels of bacteria present in waters that they routinely sample.[21] In addition, members of the public who consume fish caught areas affected by the Patapsco WWTP face increased risk. Dr. Lora Harris notes that, in the course of conducting her research, she and her colleagues "have spoken with many local fishers and have heard again and again that they intend to consume the fish and shellfish that they catch."[22] Dr. Ryan Woodland also notes the water quality degradation is particularly important in the Patapsco River "given the role this river plays as a source of food security for residents through artisanal

[20] Pl. Mem. at 9, 14-15, ECF No. 24.
[21] *See* Declaration of Alice Volpitta ("Volpitta Decl. 6/11/22") Pl. Mem. Ex. G at ¶8-9, ECF No. 24. See also Declaration of Alice Volpitta 12/7/21 at ¶¶ 13, 16, ECF No.10-1.
[22] Harris Decl. Ex. A at ¶ 17.

sustenance harvest."[23] As Dr. Woodland notes, "[f]ishing offers a low-cost, local source of protein for sustenance fishers that is often socially and culturally important."[24] Ms. Volpitta has seen "people fishing from boats in the immediate vicinity of the Patapsco WWTP effluent pipe on many different occasions."[25]

Likewise, BWB member Ms. Rodette Jones lives near the Patapsco River and is concerned for her well-being and that of her Curtis Bay community who "fish and crab in the water near the Patapsco WWTP" due to the extraordinary levels of pollution.[26] Ms. Rodette Jones has expressed concern about the safety of participating in BWB cleanups at Masonville Cove along the Patapsco River which often involve coming into contact with water.[27] Further, for Ms. Jones, who is involved with the ambitious Reimagine Middle Branch Park project for Southwest Baltimore, "[k]nowing that the Patapsco WWTP is polluting the water is frustrating and impacts the type of recreation we are envisioning for that Park."[28]

2. Illegal Pollution at Back River WWTP is Causing Irreparable Harm to BWB and its Members.

With regard to the Back River, BWB member Michael Myers has neither fished nor crabbed in the nearby Back River this year due to concerns that the water would make him sick.[29] Mr. Myers reports that few of his neighbors have fished or crabbed this year either and that the usual kayaking, jet skiing, and boating on the river near him this year has dropped dramatically or halted altogether.[30] While Mr. Myers is always cautious about his safety while on

[23] Woodland Decl. Ex. B at ¶ 12.
[24] *Id.*
[25] Volpitta Decl. 6/11/22 Pl. Mem. Ex. G at ¶ 14, ECF No. 24
[26] Declaration of Ms. Rodette Jones ("Jones Decl."), ECF No. 10-1 at 12 ¶ 4.
[27] *Id*. at ¶ 6.
[28] *Id*. at ¶ 9-10.
[29] Pl. Reply Mem. Ex. C at 8, ECF No. 28 - 4.
[30] *Id.* at 7-8.

the Back River, because of the extraordinary levels of pollution recently, he will not enter the water at all, even to conduct needed maintenance on his boat and pier.[31]

Mr. Myers says that almost no children are swimming at the nearby beach this year and his community has "significantly changed" its "engagement with the [Back] River" due to the "known pollution coming from Back River WWTP" as well as the "sludge," "clumps of dark matter," and "foam" in the river.[32] Ms. Volpitta has heard from hundreds of BWB members and other residents of Baltimore City and Baltimore County who are outraged or concerned for their safety and she receives reports of individuals, including children, who are sickened by contact with the rivers.[33]

The concerns from and for BWB staff and members involve not just health and safety threats, but also financial and organizational harms as well. Not only does BWB member Douglas Celmer no longer fish or crab in the Back River personally, he has also seen "far fewer customers" for his small business of boat storage and launching this year, which he attributes to the pollution in the Back River.[34] Mr. Celmer's family has lived at his current residence since 1915 and he and his family have made "tremendous economic sacrifice" to "Save the Bay," rendering the City's refusal, by contrast, to "maintain the facility at Back River WWTP," in his view, "unacceptable."[35]

Likewise, BWB member Keith Barr, who is a resident of Baltimore City and owns a boat that is docked near the Back River WWTP, declares that, while the most direct and immediate

[31] *Id.* at 8-9.
[32] Pl. Reply Mem. Ex. C at 7-9, ECF No. 28-4.
[33] Declaration of Alice Volpitta ("Volpitta Decl. 7/7/22") Pl. Reply Mem. Ex. C at ¶ ¶ 5, 8, 9, ECF No. 28-4.
[34] Declaration of Douglas Celmer Pl. Reply Mem. Ex. at 5 ¶ 8, ECF No. 28-4.
[35] *Id*. at ¶ 9.

harm from the illegal pollution at the Back River WWTP is having to tell his child they can no longer swim in the water, he is also finds it "exceedingly difficult to quantify the impact of the pollution" because he "care[s] very deeply about Baltimore" and says it is "hard to overstate the disappointment I feel in my city and the leadership who oversaw this reprehensible neglect."[36] Mr. Barr says that he "can no longer find a way to be optimistic in the near term about investment in the social changes necessary for Baltimore to thrive, when something as fundamental to civilization as managing human waste is willfully ignored at the Back River WWTP and Patapsco WWTP."[37]

The above statements from BWB staff and members are no doubt only a tiny fraction of the shared experience of many thousands of residents who have been impacted by the degraded aquatic ecosystem caused by the ongoing pollution from both the Back River and the Patapsco WWTPs either through sickness, lost business, or foregone recreational opportunities, or even a more fundamental decline in their faith in the institutions designed to protect their waterways and public health. Even if a preliminary injunction is an extraordinary remedy, the prolonged and ongoing deprivation of a "cherished natural resource" renders injunctive relief an appropriate remedy. *Rivera v. United States*, 910 F. Supp. 239, 243 (D.V.I. 1996).

It is also notable that these unfortunate events are taking place during the fiftieth anniversary of the passage of the Clean Water Act, an ambitious statute designed by Congress a half century ago to both "eliminate the discharge of pollutants" and "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251; 92 P.L. 500, 86 Stat. 816.

[36] Declaration of Keith Barr Pl. Reply Mem. Ex. C at 1, ECF No. 28-4.
[37] *Id*.

3. Illegal Discharges from Both WWTPs are causing Irreparable Harm to the Aquatic Ecosystems.

After decades of efforts to reduce nutrient pollution to the Back and Patapsco rivers and Chesapeake Bay from these two WWTPs, scientific experts were able to document significant reductions of pollution in the ambient water, as well as a promising ecosystem response in the previous few years.[38] Coincidentally, a team of preeminent estuarine researchers were examining these improvements in water quality in the spring of 2021 when they noticed some unfortunate results from their data collection process.[39] Their research was finding, for example, "extraordinarily high" chlorophyll levels in the Patapsco in 2021 that were nearly twice the average level from 2017 through 2020.[40] These spiking chlorophyll levels indicate a rapid increase in algal growth in the waters that have caused oxygen levels for aquatic species to drop.[41] The researchers understood the "likely" cause of this spiking of pollution and consequent plummeting in water quality was "untreated wastewater."[42] If there were any doubts as to the cause, the researchers were also finding "extremely high concentrations of nitrogen."[43] The researchers examined many different pollutant parameters, including ones they normally never consider, like suspended solids. Solids are not the type of pollution an estuarine researcher would expect to find in these waters because supposed to be removed by the primary stage of wastewater treatment, something that "takes place at even our smallest wastewater treatment plant facilities."[44]

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[38] Harris Decl. Ex. A at ¶ 4, 9, 22; Testa Decl. Ex C at ¶ 14, Fig. 2.
[39] Harris Decl. Ex. A at ¶ 19.
[40] *Id.* at ¶ 20.
[41] *Id*. at ¶ 9.
[42] *Id.* at ¶ 21.
[43] *Id.* at ¶ 19. ("Because so much of wastewater effluent nitrogen is ammonium this also points to direct impact and change in the Patapsco as a result of illegal discharges.")
[44] *Id.* at ¶ 16. ("I will be honest that I have rarely thought about solids and BOD values for modern wastewater treatment plants because of how effective and expected it is that primary

Critically, this long-term and ongoing pollution event from two massive sources of wastewater pollution has long lasting implications for Baltimore and its waters. In normal conditions, nutrient pollution can be "rapidly removed from the water column."[45] But in vulnerable coastal estuaries, especially ones that experience enough pollution to cause "eutrophication" (inadequate oxygen from overgrowth of plant life) the normal process of nutrient removal changes, with the nutrients being used or recycled to fuel overgrowth of plant life.[46] When this process takes hold, it can have lasting damage, creating a "regime shift" for the ecosystem.[47] In other words, the effects of a continuation of pollution at these levels "are likely to take much longer to reverse" and the public will have to exert even more resources and effort "to shift the estuary out of its new conditions."[48]

Nutrient pollution additions and reductions do not result in "straight line" changes to ecosystem health.[49] Instead, some pollutants leave a "legacy" of persistent and lasting impacts.[50] This is particularly true for phosphorus, one of the two nutrient pollutants discharged at exceptionally high levels at Patapsco WWTP, because phosphorus tends to be "held tightly in the sediments" at the bottom meaning that "[c]ontinuing inputs of phosphorus are likely to take much longer to reverse."[51] In fact, recent research of the Back River indicates that phosphorus can remain in the estuary for a decade.[52] So much phosphorus is contained in the sediments of

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treatment takes place at even our smallest wastewater treatment plant facilities. However, if illegal discharges from the plants in the Patapsco neglected even primary treatment, then eutrophication will be even greater as additional organic material is added to the system.")

[45] *Id.* at ¶ 21.
[46] *Id*.
[47] *Id*.
[48] *Id.* at ¶ 14, 15.
[49] Harris Decl. Ex. A at ¶ 14.
[50] Testa Decl. Ex. C at ¶ 16.
[51] Harris Decl. Ex. A at ¶ 11, 15.
[52] Testa Decl. Ex. C at ¶ 9.

the Back River that the impact of this legacy pollution on the water can be greater than the amount removed from wastewater effluent in a year.[53] Thus, every day that excessive nutrient pollution, especially phosphorus, is discharged causes longer lasting impacts that will take even more time, money, and effort to reverse.

D. Granting the Relief Requested in this Preliminary Injunction is Necessary to Prevent Further Irreparable Harm to the Patapsco and Back Rivers.

"There must be a 'sufficient causal connection' between the alleged irreparable harm and the activity to be enjoined." *Nat'l Wildlife Fed'n* 886 F.3d at 819 (*citing Perfect 10, Inc. v. Google, Inc.*, 653 F.3d 976, 981-82 (9th Cir. 2011)). Representatives of BWB and the City of Baltimore have been engaged in discussions to verify which, if any, of the items in the revised proposed Order filed on July 8, 2022 have been completed.[54] As of August 22, 2022 Plaintiff is not aware of any fully resolved items of requested relief contained in the proposed order. As described below, these items continue to be necessary at both plants to immediately mitigate ongoing and irreparable harm, or to prevent the recurrence of harm, to BWB staff, members, the public, and Baltimore's aquatic environment.[55] Moreover, the requested relief would require the City to provide a report to the Court within 30 days of the order and every 30 days thereafter regarding all progress on the actions outlined in the proposed order; this a critical component to ensure the City is held accountable to meet deadlines and expedite resolution of illegal discharges.

[53] *Id*. at ¶ 16.
[54] Proposed Order, ECF No. 28-8.
[55] Pl. Mem. Ex. H at 3, ECF No. 24. *See also* Woodland Decl. Ex. B at ¶ 11; Harris Decl. Ex. A at ¶¶ 5, 16, 21, and 22; and Testa Decl. Ex. C at ¶¶ 6, 17, 19-21.

1. Preliminary Injunctive Relief is Appropriate and Necessary at Patapsco WWTP.

The requested injunctive relief is critical to begin restoring the Patapsco WWTP to proper operating conditions and to bring about a state of compliance "as soon as possible." *Fola Coal Co., LLC*, 2016 U.S. Dist. LEXIS 73904 at 35-36. While the preliminary injunctive relief items alone are not sufficient to fully achieve permit compliance at the Patapsco WWTP, or to ensure proper and enduring operation and maintenance at the plant, they are a critical first step. Importantly, a preliminary injunction does not have to "completely prevent the irreparable harm that it identifies." *Nat'l Wildlife Fed'n* 886 F.3d at 824.

The requested relief includes the most critical actions that can be taken in the immediate term, according to independent wastewater engineers and the inspectors most familiar with these plants. Moreover, as exhaustively detailed by MDE inspection reports, overseeing the Patapsco WWTP is akin to a proverbial game of "Whack-a-Mole," where a problem is discovered, a solution is ordered, and the City either fails to comply with the directive, or addresses the problem only to find that the issue recurs due to inadequate maintenance and the critical failure to maintain any form of "preventative maintenance program."[56] An overarching issue at the Patapsco WWTP is a lack of accountability on the City's part. That is what this preliminary injunction aims to remedy–to hold the City accountable to achieve concrete tasks and to establish deadlines for reporting back to the Court.[57]

[56] Pl. Mem. Ex. A at 48, ECF No. 24. ("Preventative maintenance (PM) is a regular topic at the weekly meetings and always met with the same response. The maintenance people are doing reactive maintenance and do not have time to do PM. PM is critical to keep the equipment operating. DPW's responsiveness to the MDE Directive has been limited. The fact that the same ideas and issues keep being rehashed - week after week - in the weekly meetings speaks volumes.")

[57] *Id*. at 5, 14, 33-34.

Certainly, the City's own self-monitoring data indicate little progress, with the latest effluent concentration of nitrogen pollution at ***more than seven times greater than the statutory enhanced nutrient removal level***.[58] As previously discussed in Plaintiff's Memorandum of Support of Motion for Preliminary Injunction, despite commitments by the City to resolve both "immediate" and "short-term" issues no later than March 2022, the latest inspection reports from MDE indicate that everything from primary settling tanks "overwhelmed with floating scum and FOG" to "problems with maintenance and operations" were still occurring.[59]

The City asserted during the hearing before this Court on July 20, 2022 that the Patapsco WWTP would "soon have a similar arrangement [to Back River] in place where pursuant to a consent order and an MDE directive, MES will be on the ground there as well."[60] As of the date of this brief, there is no such arrangement, no MDE directive, no consent order, and MES is not on site at Patapsco. More than 90 days have passed since this possibility first arose but still no agreement is in place to have MES on site.[61] Even if the City soon agrees to allow MES to oversee operations, "[c]ourts must beware of attempts to forestall injunctions through remedial efforts and promises of reform that seem timed to anticipate legal action, especially when there is the likelihood of recurrence." *United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 176 (9th Cir. 1987).

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[58] Pollution and violation data for individual facilities or for entire watersheds can be found in the U.S. Env't Protection Agency's Env't Compliance History Online database, Available at: https://echo.epa.gov/. (Visited August 10, 2022). *See* Md. Code Ann., Envir. § 9-1601.
[59] Pl. Mem. Ex. F at 136, ECF No. 24.
[60] Official Transcript of Proceeding on 7/20/22 at 9, ECF No. 42.
[61] *State mulls intervening at Baltimore's second wastewater treatment plant amid growing concerns*, Baltimore Sun. (May 17, 2022). Available at: https://www.baltimoresun.com/news/environment/bs-md-mde-grumbles-patapsco-wwtp-20220517-3fn2xxiivve25hoa55kwxakz3u-story.html (visited August 19, 2022).

Moreover, even if the same MES team that worked to improve operations at Back River was ordered by MDE to begin work at Patapsco today, it took months for MES to complete the initial suite of actions that began bringing pollution levels down at Back River, in part due to the noted lack of cooperation and any sense of urgency by the City.[62] Finally, it must be emphasized that pollution concentrations at the Patapsco WWTP have recently reached levels that were more than twice as high as the highest levels discharged by the Back River WWTP in the last 18 months.[63] Thus, it may take far longer to bring pollution levels down at the Patapsco WWTP.

a. Requested Relief would Reduce the Irreparable Harm Caused by the City's Effluent Violations at the Patapsco WWTP.

Unfortunately, the pollution concentrations discharged from the Patapsco WWTP remain at staggering levels with total nitrogen concentrations about seven times higher than the levels the WWTP had previously reached in 2019 shortly after the massive, state-subsidized enhanced nutrient removal project was completed.[64] The daily effluent data reported by the City to MDE show that, for the month of July, the average phosphorus concentration of the Patapsco WWTP effluent through July 19 was 0.6 milligrams per liter, twice as high as the statutorily-defined level for enhanced nutrient removal.[65] *See* Md. Code Ann., Envir. § 9-1601.

If this Court were to grant the requested relief, the City would be required to improve and optimize dewatering processes and take all necessary steps to ensure adequate solids removal from the facility. This is consistent with the recommendations of the independent engineering firm engaged by the City, which recommended to "implement improvement/mitigation measures

[62] Pl. Mem. Ex. A at 33-34, ECF No. 24.
[63] Pl. Mem. Ex. C at 1, 4, ECF No. 24.
[64] Pl. Mem. Ex. C at 4, ECF No. 24. Note that as recently as December 2020 (during the pandemic) the WWTP was discharging nitrogen pollution concentrations of 3.5 milligrams per liter, near the enhanced nutrient removal standard.
[65] Patapsco WWTP Effluent Data Ex. E at 1-2. (The average was calculated as the mean of the values from July 1 through July 19 in the column labeled "TP".)

and make the drying process operational as soon as possible."[66] Indeed, the City's contracted engineers found that "[r]eturning the sludge inventory to a regular level is paramount for achieving permit compliance. The City should coordinate with the Dryer Facility Operator to increase the amount and reliability of sludge removal to meet plant operational needs."[67]

The requested relief also outlines requirements for increasing personnel capacity at the Patapsco WWTP, which could be accomplished through hiring staff and/or supplementing with contractors as needed. Increasing staff capacity directly impacts the ability of the plant to operate properly and reduce effluent violations.

b. Requested Relief Would Address Biosolids at Patapsco WWTP.

Granting the requested relief would require the City, within 30 days, to begin to implement a permanent solution for the proper management, treatment, and disposal of solids produced by the treatment process.[68] As the independent engineer emphasized "[r]eturning the solids stream to normal operation and establishing a healthy sludge age in the system is of utmost importance. The effectiveness of treatment process cannot be properly and fully assessed until sludge removal returns to normal conditions."[69]

During the latest MDE inspection of the Patapsco WWTP, completed July 8, 2022, the inspector noted that, in May, the City "was directed to negotiate and implement a permanent solution for the management of biosolids and submit the details of the resolution to the Department on how Patapsco WWTP plans to achieve this goal. A description of the plan of action for addressing the biosolids processing problems was submitted to the Department on June 1, 2022. However, during this inspection, **I found that some of the actions and initiation**

[66] Defendant Response in Opposition ("Def. Resp.") Ex. 1 at 2-12, ECF No. 25.
[67] *Id.*
[68] Proposed Order, ECF No. 28-8.
[69] Def. Resp. Ex 1 at 4-1, ECF No. 25.

dates in the submitted plan of action have either changed or the action is not being done."[70] (Emphasis in original).

c. Preliminary Injunction Would Improve Patapsco WWTP's Fats, Oils, and Grease Issue.

Notably, granting a preliminary injunction would also resolve the problem, as continually noted by MDE inspectors, that the Patapsco WWTP has been plagued by solidified fats, oils, and grease ("FOGs") as far back as 2013.[71] BWB's requested relief includes a requirement that the City submit to the Court, MDE, and BWB a report detailing all specific measures and actions taken to ensure compliance with the FOG Mitigation Plan.[72] MDE inspectors have continued to find "a heavy layer of scum and FOG" after the latest inspection of the Patapsco WWTP.[73] These FOGs not only cause damage to the proper functioning of the WWTP, but fat, oil, and grease balls themselves are being discharged directly into the Patapsco River in violation of the permit.[74]

d. Preliminary Injunction Would Protect Public Health by Requiring Warning Signs in Areas Affected by Permits Violations of the Patapsco Permit.

The posting of appropriate warning signs at areas known to experience fluctuating high levels of bacteria would directly reduce the threat of irreparable harm to BWB, its members, and the public. Signage and other public notification regarding the discharge of contaminated water would immediately have the effect of protecting the health of BWB staff, members, and the public by ensuring people know to avoid contact with water during and after a pollution event.

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[70] Patapsco Inspection Report 7/8/22 at 5, ECF No. 36 at 8.
[71] Def. Resp. Ex 1 at Appendix A, 6, ECF. No. 25.
[72] Proposed Order, ECF No. 28-8.
[73] Patapsco 7/8/22 Inspection Report at 16, ECF No. 36 at 19.
[74] Pl. Mem. Ex. B at 009, Patapsco NPDES permit Section II Special Condition A.2.

The Patapsco WWTP permit, like Maryland statute and regulations, requires public notification of any loss of wastewater or discharge from a sanitary sewer system, or wastewater treatment plant bypass, and importantly the permit defines "overflow" to include bypasses.[75] As specified in the permit, these initial notifications required of the City begin the public notification process established by § 9-331.1 of the Environment Article to alert the public of "the direct or potential discharge of raw or diluted sewage."

The recently modernized state law on public notification of overflows and treatment plant bypasses is designed to maximize the ability of the owner or operator to reach the public by requiring electronic notification, posting via social media, and with communications in multiple languages.[76] Importantly, this new law made wastewater treatment plant bypasses a second triggering event, along with the traditional sewer collection system overflows, for the statute's notification requirements. However, this entire system to alert the public of potential health hazards cannot operate effectively, or at all, without the owners and operators of WWTPs taking that first critical step of reporting overflows and bypasses as required by law.

The City's own reporting data certainly emphasize the ongoing need for such notifications. Sampling data at and near the outfall of the Patapsco WWTP show levels of bacteria that routinely exceed safe contact levels.[77] Any suggestion that the WWTPs are not the cause of such levels is refuted by the effluent data at the two WWTPs.[78] Daily effluent concentration data reported by the City show that bacteria levels at Patapsco WWTP have

[75] *See*, *e.g.,* Pl. Mem. Ex. B at 034, Patapsco NPDES permit Section III General Condition C.1. See also permit Section I Definitions O, ECF. No. 24.
[76] Code of Md., Env't Article § 9-331.1(b). Section 9-331.1 was amended by Chapter 310 of 2019.
[77] Patapsco WWTP Effluent Data Ex. E
[78] *Id.*

exceeded safe contact levels 20 times just since April 1, 2022, sometimes by more than 20 times the federal safe levels.[79] BWB staff routinely see individuals fishing near this outfall.[80]

Posting warning signs is necessary to protect public health and is required in the permit even if the Patapsco WWTP has not exceeded its permitted limit for bacteria. This is because there are two separate requirements in the Patapsco discharge permit: (1) the limit on bacteria discharged as calculated by monthly geometric mean[81] and (2) a separate requirement for public notification of potential overflows or bypasses.[82] Thus, the Patapsco WWTP could be within its numeric effluent limit for bacteria and still be required to notify the public about WWTP bypasses and collection system overflows.

Separate from and regardless of the monthly geometric mean limit set for bacteria in its permit, state law[83] requires adequate notification of overflows and WWTP bypasses in order to protect the public from exposure to raw or diluted sewage, which contains numerous strains of bacteria and other pollutants that are hazardous to human health.[84] The system of public notification established in the permits and state law is triggered upon a bypass, which has routinely happened and continues at the Patapsco WWTP.

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[79] *Id*. For more information about bacteria sampling and safe contact levels in Maryland see the MDE webpage on Back River Sampling Results Through July 27, 2022. *Available at*: https://mde.maryland.gov/programs/water/Compliance/Documents/Back%20River%20Sampling%20Results%20through%20July%2027%202022.docx.pdf. (Visited August 21, 2022).
[80] Pl. Mem. Ex. G at ¶ 14, ECF No. 24.
[81] Pl. Mem. Ex. B at 009, Patapsco NPDES permit Section II Special Condition A.2.
[82] Pl. Mem. Ex. B at 034, Patapsco NPDES permit Section III General Condition C.1. Patapsco Permit Section I.O defines "overlow as "any loss of wastewater or discharge from a sanitary sewer system, combined sewer system or wastewater treatment plant bypass (as defined in I.B) which results in the direct or potential discharge of raw, partially treated wastewater into waters of the state."
[83] Code of Md., Env't Article § 9-331.1
[84] Pl. Mem. Ex. G at 5, ECF. No. 24.

For example, the most recent inspection of the Patapsco WWTP described "solids going through the system," with the inspector finding "the release of methane gas in the secondary clarifiers along with floating balls of black solids," "heavy foaming with solids" on the surface in another treatment unit, "solids, algae, FOG, and scum" in the new, state-subsidized denitrification system, and finally "floating scum and FOG" in the final stage of the treatment process just before final discharge.[85] These observed issues were the result of bypasses of numerous systems that were partially or fully inoperable or taken offline altogether, including the enhanced nutrient removal system's "submerged" filters.[86] The permit defines a "bypass" as "the intentional diversion of pollutants from ***any portion*** of a treatment or collection facility." (Emphasis added).[87]

The Code of Maryland Regulations (COMAR) Section 26.08.10.08A(d) also states that unless it is advised by state officials that it is ***not*** necessary, a permittee must notify the public, as soon as practicable but not later than 24 hours after they become aware of an overflow or wastewater treatment plant bypass that could impact "waters used for public recreation where people may boat, fish, or swim." Here, there is ample evidence that areas surrounding Patapsco WWTP and locations tidally impacted by its effluent are often used for boating, fishing, kayaking, and wading into the water.[88] These notifications must be posted each time a bypass occurs, each time raw or diluted sewage is released from the collection system, and each time final-stage effluent monitoring indicates that bacteria levels exceed the assessment threshold values established in COMAR 26.08.02.03-3.

[85] Patapsco 7/8/22 Inspection Report at 6, 27, 31, 32, 37, ECF. No. 36
[86] *Id.* at 32.
[87] Pl. Mem. Ex. B at 004, Patapsco NPDES permit Section I.B., ECF. No. 24.
[88] "Volpitta Decl. 6/11/22" Pl. Mem. Ex. G at ¶14, ECF No. 24.

For any event of an overflow (including bypass) with a total volume estimated at 10,000 gallons or more, COMAR 26.08.10.08 (C) requires the owner or operator to notify the public by "[p]osting affected areas, unless advised by the MD Dept of Health, local health department, or environmental health director that the public notification is not necessary." The City asserted during the July 20, 2022 hearing that "[t]his Court not only should not, but cannot get into those issues because it has been dealt with in a separate matter."[89] This is untrue. The federal consent decree to which the City refers focuses on necessary repairs to the collection system to address overflows and did not specify a requirement for posting signs in the areas listed in the requested relief. The fact that the consent decree is silent on posting in those areas is precisely the reason that this issue is not covered in a consent decree and therefore can and should be addressed now.

It is unconscionable that the City would refuse to warn community members about the risk of coming into contact with water known to routinely experience levels of fecal bacteria far above the safe contact standard. This harm is not hypothetical. For example, on July 7, 2022, after a heavy rain event, BWB recorded enterococci bacteria levels at the Maryland Science Center, where children regularly wade into the water, at the Downtown Sailing Center that runs programs for kids to learn to sail, and at the Dragon Boat area at more than 19,000 MPN, which is over 140 times the safe threshold limit of 130 MPN.[90]

Elsewhere throughout the City there are signs permanently posted warning the public that the water is known to experience periodic unsafe levels of bacteria after rain events and to use caution contacting the water within 48 hours after a rain event, or if the water appears cloudy or has a foul order. These signs are often adjacent to structured sewer overflows known to discharge

[89] Official Transcript of Proceeding on 7/20/22 at 70, ECF No. 42.
[90] Blue Water Baltimore data available at: www.baltimorewaterwatch.org. (Visited August 21, 2022).

untreated sewage during heavy storms upstream from the final discharge points in the Inner Harbor. While signs near the structured overflow are important, signs in areas "affected" by the overflows including those articulated in the requested relief are also required under COMAR 26.08.10.08 (B).

2. Preliminary Injunctive Relief is Appropriate and Necessary at Back River WWTP.

As with the Patapsco WWTP, the lack of accountability on the part of the City is a primary reason why an injunction is necessary at the Back River WWTP. Plaintiff acknowledges that the numeric concentration of many pollutants recently appear to be consistently within the levels required by the Back River WWTP permit. Nevertheless, without judicial oversight through an injunction, the public can have no confidence that these improvements will be maintained. Further, narrative effluent standards, such as prohibition on discharges of solids are still being violated.[91]

a. Requested Relief Would Set Deadlines and Ensure Needed Accountability at Back River WWTP.

Although there has been some improvement at the Back River WWTP, a preliminary injunction is still necessary to address the irreparable harm because it would set deadlines and provide court oversight and the accountability needed to ensure the plant does not backslide. Recent history dictates that reduced pollution levels at Back River WWTP can be fleeting. For example, after reaching a monthly nitrogen concentration of as high as 8.0 milligrams per liter at the Back River WWTP in April 2021, for a period of five months beginning in the summer of 2021, the average monthly nitrogen concentration fell to 4.8 milligrams per liter.[92] But then

[91] Back River Inspection Report Ex. D at 17.
[92] Pl. Mem. Ex. C at 1, 3, ECF No. 24.

nitrogen levels quickly spiked to new record high levels in February and March of 2022.[93] This is unsurprising given the known variability of flow rates that the plant experiences on a seasonal basis, with flow typically lower during the summer.

Further, any claim that the problems at Back River WWTP are resolved merely because the numeric effluent limits are being achieved at the present time flies in the face of every engineering report and recommendation produced in the last year. The MES report includes 238 pages of findings and recommendations. The vast majority of the MES report recommendations have not yet been implemented and remain as "medium-term" or "long-term" needs.[94] Even the report produced by the engineering firm selected by the City provides dozens of "short-term" and "long-term" needs that it says must be made in order to ensure the Back River WWTP can sustainably operate in full compliance.[95] Because some of the highest priority recommendations from that report were directly incorporated into the items of requested relief associated with this preliminary injunction with deadlines attached, granting this injunction will hold the City accountable to a timeline to expeditiously address the violations.[96] A facility in a "state of catastrophic repair"[97] can only be explained by "years of neglect that will take time and dedication to correct."[98] Additionally, the Back River WWTP still faces numerous and severe operations and maintenance challenges, according to the MES report, the City's third-party engineering report, and the most recent MDE inspection report. Along with the inadequate staffing noted by MDE and MES, it is clear that Back River WWTP is likely not resilient enough

[93] *Id.*
[94] Pl. Mem. Ex. A. A summary of the "medium-term" and "long-term" issues begins on page 50 of Ex. A, ECF No. 24.
[95] Pl. Reply Mem. Ex. B, ECF No. 28.
[96] Proposed Order, ECF No. 28-8.
[97] Pl. Mem. Ex. H at 1, ECF No. 24.
[98] Pl. Mem. Ex. A at 32, ECF No. 24.

to maintain effluent concentrations within permitted limits permanently, and certainly not when seasonal flows increase.

b. Preliminary Injunctive Relief would set Deadlines and Accountability for Lasting Compliance that has not been Achieved through MES Presence at the Back River WWTP.

If there were any questions about the need for an injunction to spur prompt compliance at the Back River WWTP, the latest MDE inspection report should answer them. In the inspection that concluded on July 28, 2022, the MDE inspector found the Back River WWTP once again in a state of "noncompliance."[99] Perhaps most concerning, the inspector noted that a safety issue previously identified by MDE had still not been corrected: "Early this year, there were problems identified with the ventilation and air exchange system in the headworks building that is causing high concentrations of hydrogen sulfide (H2S) in the air... **During this inspection, I learned that the problem has not been resolved.**" (Emphasis in original).[100] Inadequate ventilation and the accumulation of hazardous hydrogen sulfide gas is a problem that has impacted both facilities and is among the list of items of requested relief that BWB included in this preliminary injunction.[101]

Although MES oversight has catalyzed and accelerated some progress on a few of the most critical short-term needs at the Back River WWTP, some areas of facility improvements are still many months behind. For example, the latest progress report from MDE on July 22, 2022 indicates that only two of the four centrifuges are online.[102] The City committed in its strategic

[99] Back River Inspection Report Ex. D at 1.
[100] Back River Inspection Report Ex. D at 2.
[101] Proposed Order, ECF No. 28-8.
[102] *July 22, 2022 Progress Report*, Maryland Department of the Environment, Available at: https://mde.maryland.gov/programs/water/Compliance/Documents/BackRiverupdate%207_22_22%20.docx.pdf. (Visited August 10, 2022).

plan to having all four in operation about nine months ago, by November 2021.[103] While this is just one example, MES reported that fixing these centrifuges and enhancing the dewatering capacity at the Back River WWTP was the single greatest priority for that facility.[104]

c. Preliminary Injunctive Relief Would Require Upkeep and Maintenance of Clarifiers at Back River WWTP.

The latest inspection report for the Back River WWTP that concluded July 28, 2022 also noted that, yet again, "[t]here was algae, duckweed and vegetation growing on and around the weirs of the clarifiers. This is causing short circuiting of the weirs. **This problem has been reported during previous inspections.**"[105] (Emphasis in original). The inspector explained that "[a]lgae can cause problems … within the treatment system and can cause problems with pumps by increasing the chances of clogging. The weirs on all secondary clarifiers should be routinely scrubbed to remove the algae. This should be done at least weekly…" If this motion for preliminary injunction were granted, the City would no longer be allowed to repeatedly ignore the findings of the MDE inspector. The proposed injunction seeks to compel the City to remove and prevent the accumulation of any algae and vegetation in any unit process at the WWTP that impacts the ability of the treatment train to control solids releases to the receiving water body.[106]

The inspection also noted that the third primary settling tank that was just brought back into operation within the last two months already has a malfunctioning component causing "floating black solids similar to what I have observed in the [chlorine contact chambers] and secondary clarifiers."[107] This is another issue that BWB is seeking to have addressed by the

[103] Pl. Mem. Ex. K at 6, ECF No. 24.
[104] Pl. Mem. Ex. A at 5, ECF No. 24.
[105] Back River Inspection Report Ex. D at 8.
[106] Proposed Order, ECF No. 28-8.
[107] Back River Inspection Report Ex. D at 3. Note that the chlorine contact chambers are the final treatment stage. It is a significant problem to have floating solids reach that stage of the

Court through this preliminary injunction.[108] MDE has informed BWB that it recently conducted an inspection of the Back River WWTP on August 16, 2022 but the report is not final. BWB will provide a copy of the inspection report to this court as soon as it is released.

d. Preliminary Injunctive Relief Would Require the City to Obtain Sufficient Staffing at Back River WWTP.

A preliminary injunction would also require the City to address severe, chronic staffing shortages at the Back River WWTP. The most recent inspection report states that "**Back River WWTP has a major staffing problem caused by a shortage of trained staff**. When discussing and obtaining information on routine equipment preventive maintenance (PM) schedules and tasks, I am told that there are not enough qualified staff to operate the plant and also perform routine PM." (Emphasis in original).[109] BWB's requested injunctive relief includes immediate action at both WWTPs to acquire and train adequate staff, which the City identified as a top concern and "root cause" of the problems at both plants.[110] Further the City committed to address this issue nearly 12 months ago in its strategic plan as a "Short-term" issue that was to be addressed nearly six months ago.[111] Adequate staffing could also be addressed through the hiring of outside contractors if necessary.

Notwithstanding reports of impropriety by personnel at Back River WWTP, BWB believes that the majority of facility staff are diligent civil servants trying to make the most of a very difficult job. In fact, both of the third-party engineering reports released in June 2022 found that the facility employees' jobs were much more difficult than they should be due to the

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treatment process, and it is a violation of the permit (Special Condition II.A.2) for those solids to be discharged through the outfall into the river.

[108] Proposed Order, ECF No. 28-8.

[109] Back River Inspection Report Ex. D at 18.

[110] Pl. Mem. Ex. K at 1, 6, ECF No. 24.

[111] *Id.*

additional tasks they need to take on due to malfunctioning equipment, the lack of adequate operations and maintenance processes in place, and the obstacles, including safety hazards, they were forced to endure daily as a result of the dilapidated condition of the WWTPs.[112]

The current WWTP employees desperately need help and should have received it many months ago when the City first acknowledged the scope of the problem. A basic premise of effective personnel retention is to maintain adequate staffing within an agency so that existing employees are not overworked to the point of resigning their positions or otherwise abdicating their assigned duties. By failing to support its remaining workforce with proper staffing levels as identified in the third party engineering reports, Baltimore City is demonstrating a severe lack of responsiveness to one of the primary causes of the dysfunctional state of both facilities. In essence, the Department of Public Works is operating as a "bureaucratic steamroller" that continues to plod forward without swift action to address the root causes of the problems afflicting these plants or their innumerable consequences. *Sierra Club v. United States Army Corps of Eng'rs*, 645 F.3d 978, 987 (8th Cir. 2011) (*citing Sierra Club v. Marsh*, 872 F.2d 497, 504 (1st Cir. 1989)) (Preliminary injunction affirmed as the lack of responsiveness of a government agency was a "proper factor" to consider in finding irreparable harm).

e. Bypasses at the Back River WWTP Trigger Notification Requirement in the Relief Requested.

The Back River WWTP permit has identical language to that of the Patapsco permit requiring notification for overflows and bypasses.[113] The requested relief requiring the City to notify and coordinate with MDE, Baltimore County, and BWB when there are known overflows and bypasses is necessary to protect public health and consistent with its NPDES permit.

[112] Pl. Mem. Ex. A at 31-35, ECF No. 24.; Def. Resp. Ex. 1 at 2-1 - 2-3, ECF No. 25; Back River Inspection Report Ex. D at 2.
[113] Back River WWTP Discharge Permit, Pl. Memo Ex. B at 46 and 74, ECF No. 24-2.

Despite some improvements due to short-term maintenance improvements and MES oversight of the Back River WWTP, there are still both bypasses and periodic discharges of high bacteria levels beyond the safe contact threshold. For example, the latest inspection report at the Back River WWTP noted that "the [denitrification filter] was in various stages of disrepair" and "[s]ome of the filters were submerged under water due to clogging."[114] This resulted in "a layer of floating solids and the remainder contained stagnant water with either floating scum or floating black sludge" that had even attracted "Midge flies."[115] The inspector noted that "algae, duckweed and vegetation" were "causing short circuiting" at one treatment stage, a problem that "**has been reported during previous inspections**."[116] (Emphasis in original).

The inspection report found that "the booms were being breached on the sides and a small portion of the floating solids were floating through" the last stage of treatment before final discharge.[117] As a consequence, the inspector directed that the City "shall keep MDE updated on the expected arrival of the eight booms, and inspect and skim the discharge from all of the contact chambers until the booms are installed."[118]

Based on these latest inspection reports, there is no question that significant operations and maintenance problems continue at Back River, resulting in solids bypassing numerous stages of the treatment system and making their way through the entire WWTP. The WWTP's effluent data also shows daily bacteria levels routinely exceeding the safe contact levels, as confirmed also by MDE in its routine sampling reports posted to the website.[119] These bypasses trigger the

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[114] Back River Inspection Report Ex. D at 11.
[115] *Id.*
[116] *Id*. at 8.
[117] *Id*. at 17.
[118] *Id*.
[119] Patapsco WWTP Daily Effluent Data, Ex. E; *See also Sampling Results Through July 27*, Maryland Department of the Environment, *Available at*:

required notification provisions of the permit and state law and the frequency and severity of bacteria levels shown by the City's own effluent monitoring data demonstrate why these notifications are desperately needed to protect the public and BWB staff and members.

E. Defendant's Delay and Lack of Responsiveness Leaves Plaintiff Without Other Options to Swiftly Redress Ongoing Irreparable Harm.

While violations have recurred at the two WWTPs for at least five years,[120] the conditions at both WWTPs significantly deteriorated beginning in early 2021.[121] Thus, the present state of noncompliance, particularly at the Patapsco WWTP, has been allowed to continue for an astonishing 18 months.[122] Indeed, about 16 months have elapsed since BWB first noticed the exceptionally high bacteria levels and notified MDE and the public.[123] And it has been more than 14 months since the inspection of the two WWTPs, after which MDE notified the City of numerous violations and widespread conditions of concern at both facilities.[124] Throughout this entire period the amount of excessive and illegal pollution discharged by these two plants has been staggering. For example, the WWTPs' self-monitoring data show that in 2021, the two WWTPs discharged more than 4.3 million pounds of nitrogen.[125] Every single day that either or both of these WWTPs have been allowed by the City to continue discharging pollutants at many times the permit levels or design standards is another day that the WWTPs have been allowed to decimate the aquatic ecosystem, threaten public health, interfere with the

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https://mde.maryland.gov/programs/water/Compliance/Documents/Back%20River%20Sampling%20Results%20through%20July%2027%202022.docx.pdf. (Visited August 12, 2022).

[120] Pl. Mem. Ex. I at 8, ECF No. 24.

[121] Pl. Mem. Ex. C at 1, 3-4, ECF No. 24.

[122] *Id.*

[123] Pl. Mem. Ex. G at 2, ECF No. 24.

[124] Pl. Mem. Ex. F at 87, 204, ECF No. 24.

[125] Pollution and violation data for individual facilities or for entire watersheds can be found in the U.S. Env't Protection Agency's Env't Compliance History Online database, Available at: https://echo.epa.gov/. (Visited August 10, 2022).

lives and businesses of thousands of residents, and undermine the State's multi-year, multi-billion dollar effort to restore the Chesapeake Bay and our tidal rivers and estuaries.

Perhaps more startling than the magnitude of pollution from the two WWTPs has been the lack of any swift response by the City. At any time during the past 18 months the City should have responded to the actions or events with urgent measures commensurate with the severity of the problem. Instead, both WWTPs are still in noncompliance and Patapsco WWTP is discharging nitrogen at concentrations similar to or greater than during the winter of 2021.[126] The lack of urgency exhibited by the City is well-documented.[127] This sluggish response is in sharp contrast to the mandate of the CWA, which demands "compliance as soon as possible." *Fola Coal*, 2016 U.S. Dist. LEXIS 73904 at *35-36 and is the reason that a preliminary injunction is necessary. "[A] preliminary injunction should issue only when the circumstances truly permit no other course, when the crisis is current or at least appears to be recurrent, that the response of the respondent is recalcitrant and clearly so, and that the total impact of the Order must be assessed." *Odessa Union Warehouse Co-op*, 833 F.2d. at 175; *see also Opticians Ass'n of Am. v. Indep. Opticians of Am.*, 920 F.2d 187, 197 (3d Cir. 1990) (Preliminary injunction granted in part due to "recalcitrant behavior" of defendant).

III. CONCLUSION

For the foregoing reasons, a preliminary injunction is essential to address the irreparable harm, protect the health and safety of BWB's members, the public at large, the Back River and Patapsco Rivers ecosystems, and the Chesapeake Bay as a whole.

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[126] Pl. Mem. Ex. C at 1, 3-4, ECF No. 24.

[127] Pl. Mem. Ex. A at 33-34, ECF No. 24. *See also Blistering state report on Baltimore's Back River Wastewater Treatment Plant details 'failures at nearly every level'*, Baltimore Sun. June 9, 2022. *Available at*: https://www.baltimoresun.com/news/environment/bs-md-back-river-mes-report-20220609-kadheruyindq5e2f3o4irsozhu-story.html. (Visited August 11, 2022).

Dated: August 22 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of August, 2022, a copy of the foregoing was served on all parties by filing the same electronically with the Clerk of the United States District Court for the District of Maryland.

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IN THE CIRCUIT COURT FOR BALTIMORE CITY

STATE OF MARYLAND DEPARTMENT OF THE ENVIRONMENT	*	
	*	
and	*	
BLUE WATER BALTIMORE, INC.	*	Case No: 24-C-22-000386
Plaintiffs,	*	
v.	*	
MAYOR AND CITY COUNCIL OF BALTIMORE, MARYLAND	*	
Defendant.	*	

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CONSENT DECREE

Plaintiff the Maryland Department of the Environment (hereinafter the "Department"), Plaintiff Blue Water Baltimore, Inc., and Defendant the Mayor and City Council of Baltimore, Maryland ("Baltimore City") represent and acknowledge that they agree to enter into this Consent Decree regarding certain alleged violations of Maryland State environmental laws relating to Baltimore City's permits authorizing the discharge of pollutants from two wastewater treatment plants ("WWTP(s)") to waters of the State, and request that this Court enter this Consent Decree as follows:

I. FACTUAL BACKGROUND

1. Baltimore City owns and operates the two largest WWTPs in the State of

Maryland: the Back River Wastewater Treatment Plant, located at 8201 Eastern Avenue, Baltimore, Maryland ("Back River WWTP"), and the Patapsco Wastewater Treatment Plant, located at 3501 Asiatic Avenue, Baltimore, Maryland ("Patapsco WWTP").

STATE AND FEDERAL DISCHARGE PERMITS FOR THE WWTPS

2. For the Back River WWTP, the Department issued Baltimore City State Discharge Permit Number 15-DP-0581A, National Pollutant Discharge Elimination System ("NPDES") Permit Number MD0021555,[1] which became effective May 1, 2018 (the "Back River Discharge Permit"). The Back River Discharge Permit was modified on January 1, 2020 and expired on April 30, 2023. Baltimore City timely submitted its permit renewal application on November 4, 2021; because of the timely renewal application, the Back River Discharge Permit has been administratively continued.

3. The Back River Discharge Permit (a) details the actions that Baltimore City is required to take to operate the Back River WWTP, and (b) limits Baltimore City's discharges of pollutants to (i) Outfall 001A in the Back River, and (ii) Outfall 002A to Bear Creek, which flows into the Baltimore Harbor Estuary, which is also known as the Patapsco River Mesohaline segment. The Back River and the Baltimore Harbor then flow into the Chesapeake Bay, the largest estuary in the United States and among the most productive

[1] The Federal Water Pollution Control Act (the "Clean Water Act"), 33 U.S.C. § 1251 *et seq.*, prohibits the discharge of pollutants into waters of the United States, unless the U.S. Environmental Protection Agency ("EPA") issues an NPDES permit. The EPA may delegate its NPDES authority to a state, 33 U.S.C. § 1342(b), and has done so here to the Department. The Department thus issues NPDES permits that authorize discharges under both federal and State law.

and valuable ecosystems in the world. The Back River and the Baltimore Harbor waters are designated as Use II waters protected for estuarine and marine aquatic life.

4. For the Patapsco WWTP, the Department issued Baltimore City, State Discharge Permit Number 15-DP-0580, NPDES Number MD0021601, which became effective October 1, 2017, and expired on September 30, 2022 (the "Patapsco Discharge Permit" or "2015 Patapsco Discharge Permit"). Baltimore City timely submitted its permit renewal application on April 30, 2021; because of the timely renewal application, the Patapsco Discharge Permit has been administratively continued.

5. The Patapsco Discharge Permit (a) details the actions that Baltimore City is required to take to operate the Patapsco WWTP, and (b) limits Baltimore City's discharges of pollutants to Outfall 001A in the Patapsco River. The Patapsco River flows to the Chesapeake Bay and is designated as Use II waters protected for estuarine and marine aquatic life.

6. The Back River and Patapsco Discharge Permits identify permit requirements as "General Conditions" or "Special Conditions." General Conditions encompass those standard requirements included in all discharge permits issued by the Department, whereas Special Conditions set forth facility specific requirements.

7. Plaintiffs allege that Baltimore City has violated numerous certain conditions contained in both Discharge Permits, including exceeding effluent limits, failing to report sampling results, failing to report discharge report non-compliance, failing to comply with

effluent sampling and testing protocols, failing to maintain sampling equipment, failing to provide various required reports, failing to comply with stormwater discharge permit requirements, and failing to efficiently operate the plants and conduct necessary maintenance.

8. Baltimore City asserts that many of the violations alleged to have occurred are attributable in part to a nationwide shortage of wastewater treatment plant operators, resulting from about 10,800 water and wastewater plant and system operators exiting the industry on an annual basis. The COVID-19 pandemic exacerbated these challenges, increasing employee turnover, making it more difficult for utilities to fill vacancies, and creating a dire need for new operators. The pandemic also accelerated retirements and led to supply chain disruptions. The City also asserts that a cyber-attack crippled many of its departments and functions, further undermining its ability to maintain compliance at the wastewater plants. At the time of the signing of this Consent Decree, Baltimore City asserts that its discharge monitoring reports indicate that it is not currently discharging pollutants from the Back River and Patapsco WWTPs in violation of its NPDES permits.

Back River WWTP

9. On or about June 16, 2021; September 20, 2021; December 29, 2021; March 18, 2022; March 22, 2022; March 26, 2022; April 16, 2022; April 22, 2022; June 2, 2022; July 14, 2022; August 16, 2022; September 27, 2022; December 14, 2022; January 26, 2023; February 24, 2023; March 15, 2023; March 16, 2023; April 26, 2023; June 14, 2023;

June 21, 2023; and July 20, 2023, the Department conducted inspections at the Back River WWTP. These inspections involved a physical inspection of the plant, as well as a review of information and materials submitted by Baltimore City before and after these inspections according to the terms of the Permit. The Back River Discharge Permit also requires Baltimore City to summarize its monitoring results each month and to submit them to the Department on Discharge Monitoring Reports ("DMRs"). DMRs must be submitted to the Department no later than the 28th day of the month following the reporting month.

10. During these inspections and review of the DMRs, the Department has made certain observations, and the Plaintiffs allege violations in connection with various Permit conditions, both of which are described below.

Effluent Limits

11. Special Conditions II(A)(1) and (2) of the Back River Discharge Permit, titled "Effluent Limitations," are the conditions that limit the amount and characteristics of pollution that the Back River WWTP can discharge to the surface waters of the Back River and Bear Creek.

12. From May 2017 through the Effective Date (defined in Paragraph 219), the Back River WWTP violated certain of the Back River Discharge Permit's daily, weekly, monthly, quarterly, and annual Effluent Limitations, including discharges of biochemical oxygen demand ("BOD"), E. coli, total nitrogen ("TN"), total phosphorus ("TP"), total suspended solids ("TSS"), chlorine, pH, and toxicity outside of maximum or minimum

limits.

13. Attached hereto as Exhibit 1 is a table of the Back River WWTP's daily, weekly, monthly, and quarterly effluent limit exceedances from May 2017 through the Effective Date, which exceedances are violations of the Back River Discharge Permit.

14. Attached hereto as Exhibits 2 through 5 are tables of the Back River WWTP's TSS, TN, and TP annual effluent limit exceedances for 2021 and 2022, which exceedances are violations of the Back River Discharge Permit.

Reporting Effluent Limit Exceedances

15. General Condition III(B)(1) of the Back River Discharge Permit requires Baltimore City to notify the Department within 24 hours if the Back River WWTP cannot or will not meet "any permit condition."

16. On numerous occasions from August 2020 through the Effective Date, Baltimore City failed to report effluent limit exceedances at the Back River WWTP.

17. Attached hereto as Exhibit 6 is a table of these effluent limit exceedances from the Back River WWTP of which Baltimore City did not notify the Department.

Reporting Sampling Results

18. General Condition III(A) of the Back River Discharge Permit, titled "Monitoring and Reporting," requires Baltimore City to take representative samples of the water being discharged from the Back River WWTP, to accurately analyze these samples and record the results, to create and submit certain reports (e.g., DMRs, monthly operating

reports) to the Department, and to retain all records and information resulting from these monitoring requirements.

19. Special Condition II(B)(1) of the Back River Discharge Permit, titled "Minimum Monitoring Requirements," then fills in General Condition III(A) with the requisite what, how, how long, and when of sampling and testing. After sampling and testing, General Condition III(A)(2)(a) then requires Baltimore City to have "summarized and submitted electronically" the Back River WWTP sampling "results obtained during each calendar month" in a DMR.

20. On repeated occasions, from January 2017 through the Effective Date, Baltimore City failed to submit sampling results for at least one parameter in its DMRs, in violation of the Back River Discharge Permit. Failing to submit sampling results in a DMR is a violation for each day of the monthly monitoring period.

21. Attached hereto as Exhibit 7 is a table of the incomplete DMR sampling results that Baltimore City did not submit to the Department for the Back River WWTP.

PCB Testing and Reporting

22. General Condition III(A) of the Back River Discharge Permit requires Baltimore City to follow appropriate testing protocols to ensure the accuracy of the sampling results.

23. To ensure the accuracy of PCB sampling results, Special Condition II(B)(1) n.16 of the Back River Discharge Permit requires Baltimore City to collect "rinsate blanks"

to assess the adequacy of sampling equipment decontamination. After sampling equipment is decontaminated, a "rinsate" or "equipment" blank is obtained. A rinsate blank is a sample of uncontaminated water that has been poured over or through the sampling equipment. The rinsate blank results indicate whether the sampling equipment itself is artificially introducing PCB contamination into the samples; for the Back River WWTP, rinsate blanks sample results may not exceed 600 pg/L.

24. Special Condition II(F)(4) of the Back River Discharge Permit requires Baltimore City to submit the PCB criteria and the sampling results for "method blanks" to ensure the accuracy of PCB sampling results. While rinsate/equipment blanks assess the adequacy of equipment decontamination, "method blanks" assess the artificial introduction of PCB contamination during sample preparation activities.

25. Special Condition II(F)(4) of the Back River Discharge Permit requires that Baltimore City submit Back River WWTP sampling results for the total concentration of both (a) Polychlorinated Biphenyls ("Total PCBs"), and (b) 12 extremely toxic individual, unique, well-defined PCB chemical compounds ("PCB Congeners").

26. From June 2018 through the Effective Date, quarterly reports that Baltimore City submitted to the Department for the Back River WWTP indicated that rinsate or method blank samples (a) were broken in transit, (b) not reported, or (c) the total PCB concentration of the rinsate blank exceeded the 600 pg/L concentration limit. In these same reports, Baltimore City also failed to submit PCB sampling results, PCB method blank data

and sampling results, or PCB Congeners results. In addition, although rinsate blanks were collected during the 3rd quarter of 2022 when sampling PCBs, problems at a City contract laboratory rendered the rinsate blanks invalid. These errors or omissions are in violation of the Back River Discharge Permit.

27. Errors or omissions in a quarterly report constitute a violation for each day of that quarter.

28. Attached hereto as Exhibit 8 is a table of these PCB sampling errors and omissions in Baltimore City's reports.

Conducting Confirmatory Whole Effluent Toxicity ("WET") Testing

29. Special Condition II(B)(1) of the Back River Discharge Permit requires Baltimore City to conduct quarterly acute and chronic Whole Effluent Toxicity ("WET") testing at the Back River WWTP.

30. If two consecutive WET tests show acute or chronic toxicity, Special Condition II(D)(10) of the Back River Discharge Permit requires Baltimore City to conduct a third confirmatory WET test within 30 days. Consecutive WET test results for February 25, 2021, and May 25, 2021, showed chronic toxicity at the Back River WWTP.

31. Baltimore City did not conduct a third confirmatory WET test within the 30-day period, which is a violation of the Back River Discharge Permit.

Maintaining Sampling Equipment

32. General Condition III(A)(5) of the Back River Discharge Permit requires

Baltimore City to "calibrate and maintain all monitoring and analytical instrumentation to ensure accuracy of measurements."

33. During a June 16, 2021, inspection, the Department observed a slight accumulation of solids on the automatic sampler container for Outfall 001 at the Back River WWTP. The accumulation of solids on this monitoring and analytical instrumentation is a violation of the Back River Discharge Permit.

34. During a March 19, 2022, inspection, the Department determined that there was no calculated rate or ratio of sodium bisulfite to the chlorine concentration for dechlorination of the final effluent, and the colorimeter used for monitoring the chlorine for process control was not being checked for accuracy.

35. During a June 2, 2022, inspection, the Department determined that Baltimore City was not annually checking the accuracy of the thermometers used to monitor the temperature of the automatic samplers, and there were no quality assurance records for the DO test SM 4500-O G. or the total residual chlorine ("TRC") test SM 4500-Cl D., as required by the approved methods.

36. During a July 14, 2022, inspection, the Department determined that Baltimore City was using incorrect test procedure ASTM method 6919-09 for the analysis of total ammonia as N.

37. During a September 27, 2022, inspection, the Department determined that the automatic sampler was not being maintained properly and needed to be cleaned.

Operating the Back River WWTP and Conducting Necessary Maintenance

38. General Condition III(B)(3)(a) of the Back River Discharge Permit requires Baltimore City to operate the Back River WWTP efficiently to minimize upsets and discharges of excessive pollution.

39. General Condition III(B)(3)(c) requires ongoing maintenance of equipment at the Back River WWTP necessary to avoid adverse effects on the quality of discharge water.

40. After the June 16, 2021, inspection of the Back River WWTP, Baltimore City informed the Department that the main centrifuge began malfunctioning in January 2021, reducing the Back River WWTP's dewatering capacity.

41. The Department observed throughout the Back River WWTP various broken and malfunctioning equipment that affects discharge water quality. The malfunctioning and broken equipment appeared to have not been properly repaired, replaced, or maintained. Inspections on June 16, 2021; September 20, 2021; December 29, 2021; March 19, 2022; March 22, 2022; April 16 and 22, 2022; June 2, 2022; July 14, 2022; August 16, 2022; September 27, 2022; December 14, 2022; January 26, 2023; February 24, 2023; April 26, 2023; June 14, 2023; June 21, 2023; and July 20, 2023, documented the following conditions at various times: partially treated solid material was being discharged to surface waters of the State due to malfunctioning equipment; only two or three of the total of 11 primary settling tanks ("PSTs") were in operation; some

denitrification filters were in need of repairs and maintenance; algae and vegetation growth and re-growth was repeatedly observed in the secondary clarifiers; biological reactors, clarifiers associated with Activators #2 and #3, and secondary clarifiers were missing parts; mixers in the biological reactors were either not functioning as designed or not functioning at all; blowers were not functioning; solids had accumulated in the biological reactors; and poor ventilation in the headworks building allowed elevated hydrogen sulfide concentrations that caused equipment corrosion.

42. From May 2018 through the Effective Date, Baltimore City reported multiple unauthorized releases of wastewater at the Back River WWTP. Attached hereto as Exhibit 9 is a table of the unauthorized discharges reported to the Department.

43. The lack of preventative maintenance, replacement, and repair of equipment at the Back River WWTP constitutes a violation of the Back River Discharge Permit.

Sampling, Analysis, & Reporting

44. Additionally, with respect to General Condition III(A), titled "Monitoring and Reporting," during a review of the Back River WWTP's 2022 effluent sampling laboratory reports, the Department observed numerous violations of the Back River Discharge Permit associated with:

a. sample collection/holding time; and

b. laboratory analysis.

From January 2022 through the Effective Date, the Department observed multiple

instances where one or more parameters were incorrectly sampled, preserved, or analyzed, many as a result of mishandling by a contract laboratory. Attached hereto as Exhibit 10 is a table of the dates and causes of the sampling violations.

Providing Adequate Operating Staff

45. General Condition III(B)(3)(b) of Back River Discharge Permit requires Baltimore City to adequately staff the Back River WWTP with sufficient qualified personnel.

46. In the June 16, 2021, inspection, the Department observed that many of the 74 certified operators at the Back River WWTP had temporary licenses rather than permanent licenses.

47. Based on the July 14, 2022; August 16, 2022; and September 27, 2022, inspections, Baltimore City continues to have a shortage of permanently certified operators to operate and maintain the Back River WWTP. This shortage of permanently certified operators is now being mitigated by employing permanently certified contract operators.

48. Adequate staffing is required for the efficient operation, maintenance, and carrying out of testing functions to ensure compliance with the Back River Discharge Permit. The staffing of an insufficient number of qualified operators is a violation of the Back River Discharge Permit.

Discharge of Floating Solids

49. Special Condition II(A)(1), n.2 of the Back River Discharge Permit prohibits Baltimore City from discharging floating solids or visible foam other than trace amounts

from the Back River WWTP.

50. During the March 22, 2022, April 16, 2022, and April 22, 2022 inspections, the Department observed floating solids in the final treated effluent.

Industrial Stormwater Discharge Permit Violations

51. General Condition III(B)(19) of the Back River Discharge Permit requires Baltimore City to "maintain coverage under [Maryland's] 'General Permit for Discharges from Storm[w]ater Associated with Industrial Activities.'"

52. Baltimore City applied for, and the Department issued, industrial stormwater discharge permit coverage for the Back River WWTP under State Discharge Permit Number 12SW0630, NPDES Number MDR000630 ("Back River Stormwater Permit"), which became effective October 15, 2014, and is now administratively extended.

53. On June 16, 2021, the Department conducted an inspection of the Back River WWTP for Back River Stormwater Permit compliance. The Department determined that Baltimore City failed to:

a. conduct quarterly routine facility inspections, in violation of Part V(A)(1) of the Back River Stormwater Permit,
b. correct violations identified in its annual inspection report, in violation of Parts IV(C-D) and V of the Back River Stormwater Permit,
c. perform the visual inspections, in violation of Part V(A) of the Back River Stormwater Permit,

d. conduct at least one quarterly visual assessment during a snow melt, in violation of Part V(A)(4) of the Back River Stormwater Permit,

e. update its stormwater pollution prevention plan ("SWPPP"), in violation of Part II(C)(3) of the Back River Stormwater Permit,

f. provide stormwater pollution prevention training for all employees, in violation of Part III(B)(1)(b)(ix) of the Back River Stormwater Permit, and

g. maintain a SWPPP site map with required information, in violation of Part III(C)(2)(c) of the Back River Stormwater Permit.

54. The failure to timely comply with the Back River Stormwater Permit is a violation of the Back River Discharge Permit.

Minimizing Adverse Impacts

55. General Condition III(B)(4) of the Back River Discharge permit requires Baltimore City to "take all reasonable steps to minimize any adverse impact to the waters of this State, human health or the environment."

56. Baltimore City's unauthorized discharge of pollutants from the Back River WWTP and other Back River Discharge Permit exceedances observed by the Department and detailed above violate General Condition III(B)(4).

Consent Order and Directive to the Maryland Environmental Service

57. On March 24, 2022, based on the issues the Department observed at the Back River WWTP, the Secretary of the Department issued an order to Baltimore City pursuant

to § 9-252(a) of the Environment Article, to operate the Back River WWTP in compliance with all terms of the Back River Discharge Permit. The allegations supporting the issuance of the March 24, 2022, order are memorialized in that order.

58. On March 27, 2022, the Secretary issued a directive pursuant to § 3-109 of the Natural Resources Article to the Maryland Environmental Service ("MES") directing it to provide additional staff for and to take certain actions to provide assistance at the Back River WWTP.

59. To avoid litigation over the March 24, 2022, order and the March 27, 2022 directive to MES, and to address the updated activities and improvements necessary to bring the Back River WWTP back into compliance with its Discharge Permit, on or about June 10, 2022: (i) the Department issued, and Baltimore City consented to issuance of, a Consent Order ("Back River Consent Order"); (ii) the Department agreed to withdraw the March 24, 2022 order and the March 27, 2022 directive to MES; and (iii) Baltimore City consented to the issuance by the Department of a revised directive to MES pursuant to § 3-109 of the Natural Resources Article ("Revised Directive").

Patapsco WWTP

60. On or about May 6, 2021; October 6, 2021; October 19, 2021; December 28, 2021; January 31, 2022; April 6, 2022; May 18, 2022; June 29, 2022; August 24, 2022; November 2, 2022; January 30, 2023; February 27, 2023; March 30, 2023; April 27, 2023; and June 15, 2023, the Department conducted inspections at the Patapsco WWTP. These

inspections involve a physical inspection of the plant, as well as a review of information and materials submitted by Baltimore City before and after these inspections according to the terms of the Permit. The Patapsco Discharge Permit also requires Baltimore City to summarize its monitoring results each month and to submit them to the Department on DMRs. DMRs must be submitted to the Department no later than the 28th day of the month following the reporting month.

61. In the course of these inspections and review of the DMRs, the Department has made certain observations, and the Plaintiffs allege violations in connection with various Permit conditions, both of which are described below.

Effluent Limits

62. Special Conditions II(A)(1-2) of the Patapsco Discharge Permit, titled "Effluent Limitations," are the conditions that limit the amount and characteristics of pollution that the Patapsco WWTP can discharge to the surface waters of Patapsco River.

63. From January 1, 2020, through the Effective Date, the Patapsco WWTP violated certain of the Patapsco Discharge Permit's daily, weekly, monthly, seasonal, and annual Effluent Limitations, including discharges of BOD, enterococci, TN, TP, dissolved oxygen, and TSS outside of maximum or minimum limits.

64. Attached hereto as Exhibit 11 is a table of the Patapsco WWTP's daily, weekly, and monthly effluent limit exceedances from January 1, 2020 through the Effective Date.

65. Attached hereto as Exhibits 12 through 17 are tables of the Patapsco WWTP's TN and TP seasonal and annual effluent limit exceedances from January 1, 2020 through the Effective Date.

Reporting Sampling Results

66. General Condition III(A) of the Patapsco Discharge Permit, titled "Monitoring and Reporting," requires Baltimore City to take representative samples of the water being discharged from the Patapsco WWTP, to accurately analyze these samples and record the results, to create and submit certain reports (e.g., DMRs, monthly operating reports) to the Department, and to retain all records and information resulting from these monitoring requirements.

67. Special Condition II(B) of the Patapsco Discharge Permit, titled "Minimum Monitoring Requirements," then fills in General Condition III(A) with the requisite what, how, how long, and when, of sampling and testing. After sampling and testing, General Condition III(A)(2)(a) then requires Baltimore City to have "summarized and submitted electronically" the Patapsco WWTP sampling "results obtained during each calendar month" in a DMR.

68. On multiple occasions, from June 2017 through the Effective Date, Baltimore City failed to submit sampling results for at least one parameter in its DMRs in violation of the Patapsco Discharge Permit. Failure to submit sampling results in a DMR is a violation for each day of the monthly monitoring period.

69. Attached hereto as Exhibit 18 is a table of the incomplete DMR sampling results that Baltimore City did not submit to the Department for the Patapsco WWTP.

Sampling, Analysis, & Reporting

70. Additionally, with respect to General Condition III(A), titled "Monitoring and Reporting," during an inspection and review of the Patapsco WWTP's operation from May 6 through June 4, 2021, the Department observed numerous violations of the Patapsco Discharge Permit associated with:

a. sample collection/holding time,

b. sample preservation/filtration,

c. laboratory analysis,

d. quality assurance sample collection,

e. total residual chlorine analysis,

f. 40 C.F.R. Part 136 sample preservation, and

g. the collection of rinsate and equipment blanks.

71. From September 2019 through the Effective Date, there were multiple instances where one or more parameters were improperly sampled, preserved, or analyzed. Attached hereto as Exhibit 19 is a table of the dates and causes of the sampling violations.

72. The May 18, 2022, inspection documented that Baltimore City failed to submit influent and effluent flow calibration records, failed to annually check the accuracy of the thermometers used to monitor the temperature of the automatic samplers, did not

meet instrument calibration requirements for total residual chlorine, and did not meet quality assurance requirements for measurement of dissolved oxygen.

PCB Testing and Reporting Failures

73. General Condition III(A) of the Patapsco Discharge Permit requires Baltimore City to follow appropriate testing protocols to ensure the accuracy of the sampling results.

74. To ensure the accuracy of PCB sampling results, Special Condition II(B)(1) n.16 of the Patapsco Discharge Permit requires Baltimore City to collect "rinsate blanks" to assess the adequacy of sampling equipment decontamination. After sampling equipment is decontaminated, a "rinsate" or "equipment" blank is obtained. A rinsate blank is a sample of uncontaminated water that has been poured over or through the sampling equipment. The rinsate blank results indicate whether the sampling equipment itself is artificially introducing PCB contamination into the samples.

75. Special Condition II(F)(4) of the Patapsco Discharge Permit requires Baltimore City to submit the PCB criteria and the sampling results for "method blanks" to ensure the accuracy of PCB sampling results. While rinsate/equipment blanks assess the adequacy of equipment decontamination, "method blanks" assess the artificial introduction of PCB contamination during sample preparation activities.

76. Special Condition II(F)(4) of the Patapsco Discharge Permit requires Baltimore City to submit Patapsco WWTP sampling results for the total concentrations of

both (a) total PCBs, and (b) PCB congeners.

77. Based on an inspection and review of the Patapsco WWTP's operation from May 6 through June 4, 2021, the Department determined that PCBs sampling data was being inaccurately reported. Between October 2020 and May 2021, Baltimore City reported rinsate blank test results in the place of sample test results. Additional Total PCB samples collected in January 2021 were neither reported nor used to calculate loading. Baltimore City also failed to (a) report the PCB Congeners, and (b) provide the method blank criteria and results.

78. Separately, the Patapsco WWTP's total PCB (tPCB) loading exceeded the annual waste load allocation of 27.2 grams in 2020, 2021, and 2022. Special Condition II(A)(1) n.4(b) of the Patapsco Discharge Permit requires Baltimore City to submit a plan to track tPCB sources and best management practice implementation to address this condition, which has not occurred to-date.

Toxic Chemical Testing

79. Special Condition II(B)(1) n.l6 of the Patapsco Discharge Permit requires Baltimore City to perform toxic chemical testing and monitoring.

80. Special Condition II(F)(4) of the Patapsco Discharge Permit requires Baltimore City to perform this "in accordance with 40 CFR Part 136" and the Department's Toxic Pollutant Monitoring Protocol and Reporting Requirements for Toxic Chemical Testing Analytical Data.

81. During an inspection and review of the Patapsco WWTP's operation from May 6 through June 4, 2021, the Department concluded that

a. samples were not preserved as required by 40 C.F.R. Part 136:

   i. the pH of the compound Acrolein was incorrectly adjusted, and

   ii. by the time the sample was received by the City's primary contact laboratory, its temperature was measured at 8°C, which exceeded the 6°C maximum temperature;

b. rinsate blank results and chain of custody documentation indicated significant reporting and operational irregularities;

c. the requisite chain of custody documents were incomplete; and

d. the reporting limit used for Chromium VI was 10 µg/L, not the required 0.1 µg/L reporting limit.

Submitting Wastewater Capacity Management Plan

82. Special Conditions II(B)(2), II(B)(2) n.24, and II(C) of the Patapsco Discharge Permit require Baltimore City to submit to the Department an updated 2020 wastewater capacity management plan ("WCMP").

83. MDE's July 6, 2006 Guidance Document for Wastewater Capacity Management Plans, referred to in Special Condition II(C) of the Patapsco Discharge Permit, directs municipalities to "[s]ubmit the Wastewater Capacity Management Plan . . . to MDE for municipalities operating at 80% design capacity by January 31st based on the

three year adjusted average flow."

84. Baltimore City submitted a 2017 WCMP on February 9, 2018. From 2018 through 2020, the Patapsco WWTP operated at or above 80% of its design capacity.

85. Baltimore City's subsequent submittal of a 2020 WCMP, on August 31, 2021, was seven months late, in violation of the Patapsco Discharge Permit.

Systemic Fat, Oil, & Grease ("FOG") Mitigation

86. Special Condition II(A)(1) n.2 of the 2015 Patapsco Discharge Permit prohibits the "discharge of floating solids or visible foam other than trace amounts."

87. Special Condition II(M)(d) of the 2015 Patapsco Discharge Permit requires Baltimore City to "report to the Department on an annual basis at the end of each calendar year all measures taken to comply with the [FOG Mitigation P]lan."

88. On or about May 4, 2021, Blue Water Baltimore provided information to the Department that its staff had observed widespread FOGs in the water around the Patapsco WWTP's discharge pipe in violation of Special Condition II(A) n.1.

89. Baltimore City also failed to submit to the Department the annual reports 2020 and 2021 describing measures taken to comply with the FOG Mitigation Plan in violation of Special Condition II(M) of the 2015 NPDES Discharge Permit.

Reported Effluent and Influent Flow Measurement

90. Based on data reported to the Department for calendar year 2022, the daily flow data indicate that the daily Patapsco WWTP influent is about 15 to 30 percent greater than the volume of wastewater being discharged.

91. During an inspection on August 24, 2022, the plant manager for the Patapsco WWTP informed the Department that there was a problem with the influent flow meter that started in February 2022. However, the calibration records for the influent and effluent flow measurement system for the period January through May 2022 show satisfactory calibration and operation of the influent and effluent flow measuring systems. Therefore, the Department determined that further investigation into the discrepancy is warranted to determine the cause of the discrepancy and any necessary flow meter improvements.

Providing Adequate Operating Staff

92. General Condition III(B)(3)(b) of the Patapsco Discharge Permit requires Baltimore City to adequately staff the Patapsco WWTP with sufficient qualified personnel.

93. On September 7, 2021, the Department determined that many of the 45 certified operators at the Patapsco WWTP had temporary rather than permanent licenses.

94. The Department's May 18, 2022 inspection documented that four operators at the Patapsco WWTP had not submitted proof to management that they had applied for license renewal.

95. The August 24, 2022 inspection revealed that there are approximately 50 vacancies at the Patapsco WWTP, which vacancies were being addressed in part by the use of contract staff.

96. Adequate staffing is required for the efficient operation, maintenance, and carrying out of testing functions to ensure compliance with the Patapsco Discharge Permit.

The staffing of an insufficient number of qualified operators is a violation of the Patapsco Discharge Permit.

Operating the Patapsco WWTP and Conducting Necessary Maintenance

97. General Condition III(B)(3)(a) of the Patapsco Discharge Permit requires Baltimore City to operate the Patapsco WWTP efficiently to minimize upsets and discharges of excessive pollution. And General Condition III(B)(3)(c) requires ongoing maintenance of equipment at the Patapsco WWTP necessary to avoid adverse effects on the quality of discharge water.

98. In the May 6, 2021 inspection report, the Department documented that the Patapsco WWTP had systemic operational and maintenance failures that affected discharge water quality, including, but not limited to, deficient FOG Mitigation Plan implementation.

99. Inspections conducted on May 6, 2021; October 6, 2021; October 19, 2021; December 28, 2021; January 31, 2022; April 6, 2022; May 18, 2022; June 29, 2022; August 24, 2022; November 2, 2022; January 30, 2023; February 27, 2023; March 30, 2023; April 27, 2023; and June 15, 2023, documented the following conditions at various times: the loss of filter media from the biological aerated filter ("BAF") system to waters of the State; accumulation of debris on the belt conveyors that affected their operation; floating scum and FOG at the chlorine contact chamber; accumulation of floating scum and FOG in the PSTs; inadequate processing of sludge by the gravity sludge thickeners ("GSTs") that require repairs, cleaning, and maintenance; broken aerators in the biological reactors;

nonfunctioning DNF system due to submerged cells and clogging of the system; broken return activated sludge pumps; non-functioning scum logs; out of service scum collection troughs on the chlorine contact chambers; and the inability of the liquid oxygen ("LOX") plant to deliver oxygen to the high-pressure pure oxygen reactors.

100. The January 31, 2022, April 6, 2022, and May 18, 2022, inspections documented that, due to solids processing delays, Baltimore City was storing unprocessed sludge at the tailings transfer station that clogged drains, and Baltimore City placed pollutants, namely sludge, in a position likely to pollute waters of the State via the storm drain system. These deficiencies were subsequently corrected.

101. The lack of preventative maintenance, replacement, and repair of equipment at the Patapsco WWTP constitutes a violation of the Patapsco Discharge Permit.

Industrial Stormwater Discharge Permit

102. General Condition III(B)(19) of the Patapsco Discharge Permit requires Baltimore City to "maintain coverage under [Maryland's] 'General Permit for Discharges from Storm[w]ater Associated with Industrial Activities.'"

103. Baltimore City applied for, and the Department issued, industrial stormwater discharge permit coverage for the Patapsco WWTP under State Discharge Permit Number 12SW0629, NPDES Number MDR000629 ("Patapsco Stormwater Permit"), which became effective October 15, 2014 and is now administratively extended.

104. On June 29, 2022, the Department conducted an inspection of the Patapsco

WWTP for Patapsco Stormwater Permit compliance. This inspection documented that Baltimore City failed to:

a. update its SWPPP, in violation of Part II(C)(3) of the Patapsco Stormwater Permit,

b. maintain a SWPPP site map with required information, in violation of Part III(C)(2)(c) of the Patapsco Stormwater Permit,

c. conduct quarterly inspections, in violation of Part V(A)(1) of the Patapsco Stormwater Permit,

d. conduct comprehensive annual evaluations, in violation of Part V(A)(2)(b) of the Patapsco Stormwater Permit,

e. conduct quarterly visual inspections, in violation of Part V(A)(3) of the Patapsco Stormwater Permit, and

f. provide stormwater pollution prevention training for all employees, in violation of Part III(B)(1)(b)(ix) of the Patapsco Stormwater Permit.

105. The failure to comply with the Patapsco Stormwater Permit is a violation of the Patapsco Discharge Permit.

Minimizing Adverse Impacts

106. General Condition III(B)(4) of the Patapsco Discharge permit requires Baltimore City to "take all reasonable steps to minimize any adverse impact to the waters of this State, human health or the environment."

107. Baltimore City's unauthorized discharge of pollutants from the Patapsco WWTP and other Patapsco Discharge Permit exceedances observed by the Department and detailed above violate General Condition III(B)(4).

STATUTORY AND REGULATORY AUTHORITY

108. Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland, prohibits the discharge of any pollutant into the waters of the State unless authorized by a discharge permit issued by the Department. The term "discharge" includes the placement of a pollutant in a position where it is likely to pollute waters of the State. Title 9, Subtitle 3 also provides that any person who violates any provision of Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or permit adopted or issued by the Department thereunder, is liable for a civil penalty of up to $10,000 per violation. Each day a violation occurs is a separate violation.

109. Title 9, Subtitle 3 also provides that the Department may seek injunctive relief to address violations of any rule, regulation, order, or permit issued pursuant to the Water Pollution Control Subtitle.

THE LITIGATION

110. On January 21, 2022, the Department filed the above-captioned lawsuit in the Circuit Court for Baltimore City seeking relief under Title 9 of the Environment Article, alleging that Baltimore City's operation of the Back River and Patapsco WWTPs violated the Discharge Permits and State water pollution laws. As a result of Baltimore City's

responsibility to comply with the various permit requirements at both the Back River and Patapsco WWTPs and its liability for failing to do so, the Department's complaint seeks: (a) civil penalties; (b) pre- and post-judgment interest; and (c) attorneys' fees and costs.

111. The Department also seeks an injunction requiring Baltimore City to take all necessary and appropriate actions to immediately stop unpermitted discharges of pollutants from the Back River and Patapsco WWTPs into the waters of this State, and to take all necessary and appropriate actions to prevent future unpermitted discharges of pollutants from the Back River and Patapsco WWTPs into the waters of this State.

112. On February 3, 2022, Plaintiff Blue Water Baltimore filed an Unopposed Motion to Intervene in the Department's action pursuant to § 9-344.1 of the Environment Article, which allows intervention in civil actions involving water pollution control.

113. On April 4, 2022, Baltimore City filed its answer to the Department's complaint.

114. On April 8, 2022, the Circuit Court granted Blue Water Baltimore's motion.

115. On December 15, 2021, Blue Water Baltimore filed an action in the United State District Court for the District Court of Maryland, Docket No. 1:21-cv-03176-LKG, seeking, among other things, injunctive relief to require Baltimore City to comply with its NPDES permits for the Back River and Patapsco WWTPs, as well as with the requirements of the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and state requirements

("Federal Action"). The Federal Action is largely based upon the same facts set forth in this Consent Decree.

116. Plaintiffs have expended resources, including attorney resources, in bringing this suit.

117. To avoid protracted litigation of the alleged violations and the corrective action required, Plaintiffs and Baltimore City (collectively, "Parties"), have reached an agreement on the terms of this Consent Decree. The Parties recognize that, and the Court by entering this Consent Decree finds that, this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

118. It is the mutual objective of the Parties, by entering into this Consent Decree, to provide for and achieve compliance with the environmental laws addressed by this Consent Decree in an expeditious manner to protect public health and the environment.

119. The Department believes that this Consent Decree is in the best interests of and will benefit the residents of the State of Maryland.

120. It is expressly understood that this Consent Decree pertains to the specific alleged violations described herein, and in the state and federal complaints, and that the Parties have made no promises or representations other than those contained in this Consent Decree and that no other promises or representations will be made unless in writing, and

the Department makes no representations with regard to any criminal liability for the above-referenced allegations and has no authority over any criminal actions.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II. JURISDICTION AND VENUE

121. For purposes of this Consent Decree, Plaintiffs and Baltimore City agree that the Court has jurisdiction over the Parties and over the subject matter of this action pursuant to Title 9, Subtitle 3 of the Environment Article, Annotated Code of Maryland, and that venue is proper under § 6-201 of the Courts and Judicial Proceedings Article, Annotated Code of Maryland.

122. For purposes of this Consent Decree, or any action to enforce this Consent Decree, the Parties consent to this Court's jurisdiction over this Consent Decree and consent to venue in this judicial district.

III. WORK TO BE PERFORMED

A. Review and Approval Process

123. All documents required under this Section III (Work to be Performed) of this Consent Decree to be submitted to the Department ("Submittal(s)") shall be made simultaneously to Blue Water Baltimore. Electronic submission is preferred, where practicable. All documents shall be submitted in accordance with Section XIII (Notification).

124. The Department shall promptly review each Submittal and may approve, disapprove, or require revisions to the Submittal. The Department shall consult with Blue Water Baltimore on all approvals, disapprovals, or required revisions, as set forth below.

125. Blue Water Baltimore shall have the right to review all Submittals and provide the Department with written comments within 30 days of Blue Water Baltimore's receipt of the Submittal. The Department and Blue Water Baltimore shall consult and make best efforts to collaboratively resolve any disagreements or concerns that may arise regarding the adequacy of Baltimore City's Submittals prior to the Department making its final determination on the Submittal.

126. The Department shall notify Baltimore City in writing within 30 days of submission if it determines that a Submittal is substantially deficient or flawed and shall set forth the basis for that determination in such notification.

127. If the Department requires revisions to a Submittal, Baltimore City shall provide a revised Submittal within 30 days of the Department's notice unless a later time period is agreed to by the Department.

128. All plans, studies, schedules, deadlines, and reports set forth in Submittals approved by the Department shall be incorporated by reference into this Consent Decree and enforceable as if fully set forth herein.

B. Status of the June 10, 2022 Consent Order

129. The currently effective Back River Consent Order and Revised Directive are hereby terminated and of no further effect as of the Effective Date of this Consent Decree.

C. Compliance with Effluent Limitations

130. Until such time as renewal permits are issued for either the Back River WWTP or the Patapsco WWTP, all numeric and narrative Effluent Limitations and conditions in the Back River Discharge Permit and the Patapsco Discharge Permit remain in full force and effect for each respective WWTP, and Baltimore City shall comply with all such Effluent Limitations and conditions at all times.

D. Work To Be Performed

131. Baltimore City shall take all of the following corrective actions in accordance with the applicable deadlines set forth in this Section III.D. The Parties acknowledge that equipment is periodically taken offline for routine maintenance or repair and that such routine activities do not render the equipment inoperable or unavailable for use for the purposes of this Consent Decree so long as compliance with effluent limitations can be maintained and the equipment is returned to operational service promptly.

Back River WWTP

Repair or Replacement of Plant Components and Equipment

132. Within 30 days of the Effective Date, Baltimore City shall complete replacement of the H2S sensors.

133. With respect to the PSTs, Baltimore City shall:

a. Clean and complete repairs on at least eight PSTs to ensure that they are fully functional and capable to operate as designed by January 1, 2024; and

b. Clean and complete repairs to all 11 PSTs to ensure that they are fully functional and available for use by December 31, 2025.

134. By December 1, 2023, Baltimore City shall ensure that it has and maintains an adequate supply of Dissolved Oxygen ("D.O.") probes, and ensure that any failing probes are promptly replaced. Baltimore City anticipates delivery of the D.O. probes on October 25, 2023. Baltimore City shall promptly notify Plaintiffs upon obtaining an adequate supply of D.O. probes.

135. Baltimore City shall adequately maintain Activated Sludge Plants No. 2 and No. 3 and the associated clarifiers. With respect to the final clarifiers for Activated Sludge Plants No. 2 and No. 3, Baltimore City shall:

a. Within 60 days of the Effective Date, submit to the Plaintiffs for review and the Department for approval, the existing standard operating procedure ("SOP") for the routine removal of vegetative growth and preventative maintenance ("Vegetative Growth Removal SOP") for the final clarifiers and revise the SOP in accordance with comments received from the Department;

b. Implement the Vegetative Growth Removal Plan immediately upon approval in accordance with the approved schedule and keep the final clarifiers free from vegetation;

c. Maintain an average sludge blanket depth of two to four feet in the final clarifiers; and

d. Maintain manual operations until the Activated Sludge PLCs are updated and set up for automatic operation.

136. By April 30, 2024, Baltimore City shall complete an evaluation of sand filters. Within 10 days of the sand filter evaluation, Baltimore City shall either: a) request approval for a change to the use of the approved sand filter facilities, signed and sealed by a Maryland professional engineer, to demonstrate that some or all of the sand filters are not necessary to treat effluent; or b) submit to the Plaintiffs for review and the Department's approval a plan and schedule for the implementation of sand filter improvements ("Sand Filter Improvement Plan"). Immediately upon approval Baltimore City shall implement the approved Sand Filter Improvement Plan in accordance with the approved schedule.

137. By June 30, 2024, Baltimore City shall repair all Gravity Belt Thickeners ("GBTs") to operate as designed.

138. By December 31, 2023, Baltimore City shall repair and install one of the three non-operational dissolved aeration flotation system ("DAFs") and thickened sludge pumps.

139. By August 16, 2023, Baltimore City shall issue a notice to proceed with a contract for the rehabilitation of the egg-shaped digesters, and shall complete rehabilitation of the egg-shaped digesters by September 16, 2027.

140. Within 30 days of the Effective Date, Baltimore City shall submit to the Plaintiffs for review and the Department's approval, a plan and schedule for maintenance of the centrifuges ("Centrifuge Maintenance Plan"), and immediately upon approval implement the Centrifuge Maintenance Plan in accordance with the approved schedule.

141. By December 31, 2023, or within 90 days of receipt of parts, whichever is sooner, Baltimore City shall complete repairs and installation of Centrifuge #4 to operate as designed. Baltimore City shall notify Plaintiffs upon receipt of parts.

Adequate Staffing and Preventative Maintenance

142. By December 31, 2023, Baltimore City shall submit to the Plaintiffs an initial report and evaluation of current staffing levels, number of vacancies, and the recommended staffing required to carry out operation, maintenance, and testing functions of the Back River WWTP ("Staffing Report"), and a plan and schedule for the Department's review that provides that Baltimore City shall achieve recommended staffing levels ("Staffing Plan"). If the Department's review determines that the Staffing Plan requires additions or modifications to ensure proper operation of the facility to maintain compliance with permit conditions, the Department will notify the City, and the City shall modify or revise the Staffing Plan as needed to address the Department's concerns. The Staffing Plan shall

include short-term and long-term strategies to recruit and retain recommended staffing levels, including increasing the number of safety managers, and may allow for the use of outside contractors to augment City staff. The Staffing Plan shall also address maintaining an operator training program; use of an outside training company is permitted but not required. Baltimore City shall implement the Staffing Plan, and shall provide quarterly updates to the Department on then-current staffing levels.

143. By June 30, 2024, Baltimore City shall have, maintain, and make available to the Department at its request formal written operation and maintenance policies and procedures that are necessary to operate the Back River WWTP in compliance with its Discharge Permit, including available printed operating procedures, manufacturers guidelines, and standard reference texts ("Back River WWTP SOP"). These policies should address permit compliance, maintaining process controls and understanding process control systems, proper calibration and maintenance of monitoring equipment used for process control and permit monitoring requirements, and preventative and routine maintenance. The Back River WWTP SOP shall address:

a. Emergency situations;

b. Equipment record system;

c. Inventory management;

d. Hydraulic overloads;

e. Laboratory contracts and deliverables;

f. Permit requirements;

g. Preventative maintenance;

h. Process control;

i. Pumping stations;

j. Safety;

k. Sludge handling and disposal;

l. Treatment chemical supply; and

m. Treatment process.

144. Within 180 days of the Effective Date, Baltimore City shall submit to the Plaintiffs a report that identifies what processes at the Back River WWTP are currently automated, and shall conduct a feasibility study for the automation of additional processes, with a plan and schedule for future automation.

145. Baltimore City shall have, maintain, and update a Computerized Maintenance Management System ("CMMS") as a functional work order system to ensure that the plant and its equipment and components operate as designed.

146. Within one year of the Effective Date, Baltimore City shall complete a condition assessment and inventory of existing assets in order to develop an asset management program, and within 90 days of completion of the assessment and inventory Baltimore City shall complete development of and begin implementing the asset management program.

Patapsco WWTP

Repair or Replacement of Plant Components and Equipment

147. Baltimore City shall continue to provide the dryer facility with access to, and control of, GST thickened sludge pumps to automate sludge withdrawal from the GSTs until the existing stored sludge from the SBTs is removed and the SBTs are returned to normal operating mode.

148. Baltimore City shall have and maintain contracts for on-call hauling services to serve as a back-up to the dryer facility, to diversify solids management alternatives for the Plant and to reduce operational and permit compliance risks in the future.

149. By December 31, 2027, Baltimore City shall complete replacement or rehabilitation of the grit facility, which shall include provision for odor control and proper ventilation to ensure safety of personnel and compliance with the Permit. A request for proposals shall issue for the project on or before April 30, 2024. Prior to the replacement or rehabilitation of the grit facility, Baltimore City shall take any necessary steps to ensure the safety of the workers who enter the grit facility. This includes requiring all workers to comply with the existing standard operating procedures in place at the time of the Effective Date, including SOP numbers WWW-PAT-GRT-1000, WWW-PAT-GRT-1001, WWW-PAT-GRT-1005, WWW-PAT-GRT-1006, and WWW-PAT-GRT-1007 ("Grit Facility SOPs"). The Grit Facility SOPs require workers to utilize a "buddy system" when entering the grit facility, with each employee utilizing a calibrated portable gas detector. Before

entering the grit facility, the Grit Facility SOPs require workers to, among other things: (1) turn on their portable gas detector and wait until the detector has gone through its initial checks; (2) ensure that all three air handling units (MUAU-1 through MUAU-3) are on and working; (3) open the truck bay doors on the south side of the facility 2-3 feet; and (4) ensure that all three exhaust fans (EF-1 through EF-3), located on the north side of the facility in Fan Rooms 105-107, are on and working properly. The Grit Facility SOPs further mandate that workers must evacuate the grit facility if hydrogen sulfide gas level readings are 10 parts per million or higher. Any changes to the Grit Facility SOPs prior to the completion or rehabilitation of the grit facility must be sent to the Department before implementation.

150. By June 30, 2024, Baltimore City shall repair or refurbish Industrial Plant Influent Facility ("IPI") screens and pumps, and replace or fully rehabilitate the IPI facility to operate as designed.

151. By June 30, 2024, Baltimore City shall repair all non-functional screens in the Fine Screen Facility, increase screen opening size for three screens, and install new conveyors, northern screen compactors, and curtains from the screen chutes to the belt that will minimize the screenings falling off the belt.

152. Until such time as the scum trough activators are repaired and upgraded, Baltimore City shall implement all staffing and operation changes necessary to prevent scum releases to downstream unit processes. By June 30, 2024, Baltimore City shall repair

and upgrade scum trough actuators associated with the PSTs to allow for automatic operation of the scum removal system, and upgrade mechanisms of clarifiers #1-3 to provide automatic operation.

153. Except as otherwise provided in Paragraph 152, within 30 days of the Effective Date, Baltimore City shall ensure that all six PSTs are fully functional and capable to operate as designed.

154. Within 10 days of the Effective Date, Baltimore City shall:

a. repair all RAS/WAS pumps for secondary clarifier #6a to operate as designed;

b. replace missing skimmer sections to increase scraper effectiveness; and

c. remove BAF media from secondary clarifier influent and BAF mudwells.

155. By April 1, 2024, Baltimore City shall complete an evaluation of the need for secondary clarifier #3. Within 30 days of the clarifier evaluation, Baltimore City shall either: a) request approval to discontinue or alter the use of clarifier #3, signed and sealed by a Maryland professional engineer, to demonstrate that clarifier #3 is not necessary to treat effluent; or b) submit to the Plaintiffs for review and the Department's approval a plan and schedule for the implementation of improvements to clarifier #3 ("Clarifier #3 Improvement Plan"). Immediately upon approval Baltimore City shall implement the approved Clarifier #3 Improvement Plan in accordance with the approved schedule.

156. Within 30 days of the Effective Date, Baltimore City shall complete an

investigation of Biological Aerated Filter Facility ("BAF") media state, with consideration of extra backwashing cycles to flush media, and to address BAF media loss.

157. Within 60 days of the Effective Date, Baltimore City shall submit to the Plaintiffs for review and the Department's approval a plan and schedule to address BAF media loss and prohibit any discharge of media to waters of the State, and immediately upon approval shall implement the plan in accordance with the approved schedule.

158. By January 31, 2025, Baltimore City shall automate timed scum log operation of the chlorine contact tank to reduce operator workload requirements.

159. Until such time as timed scum log operation of the chlorine contact tank has been automated, Baltimore City shall ensure staff are present as needed during each shift to maintain manual skimming of FOGs or floating solids to ensure that no FOGs or floating solids are discharged from the facility, and in any event no less frequently than every eight hours. Baltimore City shall maintain and make available to the Department at its request a log to document compliance with this provision.

160. Within 120 days of the Effective Date, Baltimore City shall rehabilitate GST #4 and associated pumps.

161. Within 10 days of the Effective Date, or within 30 days of receipt of parts, whichever is sooner, Baltimore City shall ensure all GSTs are fully functional and operating as designed, except for the work described in Paragraph 160. Baltimore City shall notify Plaintiffs upon receipt of parts.

162. Within 30 days of the Effective Date, Baltimore City shall submit to the Plaintiffs for review and the Department's approval a PCB Minimization Plan, and immediately upon approval implement the plan in accordance with the approved schedule.

163. Within 30 days of the Effective Date, Baltimore City shall complete and submit to the Plaintiffs the results of an investigation into the flow meter and a root cause analysis of the discrepancy between the effluent and influent flow volume.

164. Within 10 days of the Effective Date, Baltimore City shall submit to the Plaintiffs for review and the Department's approval a revised FOG Mitigation Plan, and immediately upon approval shall implement the plan. The FOG Mitigation Plan shall provide for, at a minimum:

a. A comprehensive control strategy for the mitigation of FOG discharges to the Patapsco River including a description of the facility's prioritized approach for the development of site-specific FOG control strategies;

b. A detailed description of resources, staff, best management practices, and other operational and maintenance SOPs dedicated to FOG mitigation and source tracking, including identification of all potential FOG sources evaluated and FOG source tracking strategies used for source prioritization, and all data used to prioritize sources such as manhole interceptor monitoring and residential, commercial, and industrial district monitoring, which includes all industrial sites with the potential to discharge FOG;

c. A list of the metrics or description of the methods that used for the development of FOG control strategies, which shall be used to measure and report future progress to determine the effectiveness of the FOG Mitigation Plan in achieving maximum practicable reduction of FOG at Outfall 001; and

d. Submission of annual reports describing the measures taken to comply with the FOG Mitigation Plan, in accordance with Special Condition II(M).

Adequate Staffing and Preventative Maintenance

165. By December 31, 2023, Baltimore City shall submit to the Plaintiffs an initial report and evaluation of current staffing levels, number of vacancies, and the recommended staffing required to carry out operation, maintenance, and testing functions of the Patapsco WWTP ("Staffing Report"), and a plan and schedule for the Department's review that provides that Baltimore City shall achieve recommended staffing levels ("Staffing Plan"). If the Department's review determines that the Staffing Plan requires additions or modifications to ensure proper operation of the facility to maintain compliance with permit conditions, the Department will notify the City, and the City shall modify or revise the Staffing Plan as needed to address the Department's concerns. The Staffing Plan shall include short-term and long-term strategies to recruit and retain recommended staffing levels, including increasing the number of safety managers, and may allow for the use of outside contractors to augment City staff. The Staffing Plan shall also address maintaining an operator training program; use of an outside training company is permitted but not

required. Baltimore City shall implement the Staffing Plan, and shall provide quarterly updates to the Department on then-current staffing levels.

166. By June 30, 2024, Baltimore City shall have, maintain, and make available to the Department at its request formal written operation and maintenance policies and procedures that are necessary to operate the Patapsco WWTP in compliance with its Discharge Permit, including available printed operating procedures, manufacturers guidelines, and standard reference texts ("Patapsco WWTP SOP"). These policies address permit compliance, maintaining process controls and understanding process control systems, proper calibration and maintenance of monitoring equipment used for process control and permit monitoring requirements, and preventative and routine maintenance. The Patapsco WWTP SOP shall address:

a. Emergency situations;

b. Equipment record system;

c. Inventory management;

d. Hydraulic overloads;

e. Laboratory contracts and deliverables;

f. Permit requirements;

g. Preventative maintenance;

h. Process control;

i. Pumping stations;

j. Safety;

k. Sludge handling and disposal;

l. Treatment chemical supply; and

m. Treatment process.

167. Within 180 days of the Effective Date, Baltimore City shall submit to the Plaintiffs a report that identifies what processes at the Patapsco WWTP are currently automated, and shall conduct a feasibility study for the automation of additional processes, with a plan and schedule for future automation.

168. Baltimore City shall have, maintain, and update a Computerized Maintenance Management System ("CMMS") as a functional work order system to ensure that the plant and its equipment and components operate as designed.

169. Within one year of the Effective Date, Baltimore City shall complete a condition assessment and inventory of existing assets in order to develop an asset management program, and within 90 days of completion of the assessment and inventory Baltimore City shall complete development of and begin implementing the asset management program.

E. Transparency and Public Notification

170. Beginning within 14 days of the Effective Date, and on every subsequent February 15, May 15, August 15, and November 15 during the pendency of this Consent Decree, Baltimore City shall submit to the Plaintiffs and post on its website quarterly

progress reports detailing for the preceding calendar quarter, at a minimum, the implementation of any corrective actions and work performed under the Consent Decree, progress tracking on projects, required completion dates and actual completion dates, financial expenditures on each project, and all stipulated penalties that have accrued during that quarter. If deadlines have not been met, an explanation as to why they have not been met must be provided. These reports should be in a consistent format such that each report builds on the earlier ones so milestones and cumulative progress can be easily seen and understood by the public and must include at a minimum, an accounting of any maintenance inadequacies that affected plant functioning, as identified by engineers, identification of current staffing levels compared to current needs, and steps taken to fill vacancies, including the use of contractors in lieu of permanent staff.

171. Baltimore City shall hold, at a minimum, one virtual and one in-person public meeting per year for each facility until completion of the Consent Decree. The virtual and in-person meetings can occur simultaneously. Meetings shall address the progress of complying with this Consent Decree, ongoing work being done by Baltimore City on the facility, as well as the current status of the facility in relation to completion of the work to be performed under this Consent Decree. The meetings shall provide for an opportunity for public comment following the meeting. Baltimore City shall advertise the meeting to both Baltimore City and Baltimore County residents, provide adequate advance notice, and maintain an interested parties list.

172. For Back River WWTP, within 30 days of the Effective Date, Baltimore City shall install a sign at the pier adjacent to outfall 001 that notifies the public of the presence of the submerged wastewater treatment effluent pipe. For Patapsco WWTP, within 90 days of the Effective Date, Baltimore City shall apply for and diligently pursue all permits, licenses, or other authorizations necessary for the installation of a sign at the location of the submerged outfall pipe that notifies the public of the presence of the submerged wastewater treatment effluent pipe, and within 90 days of receiving such permits, licenses, or other authorizations Baltimore City shall install the sign. Baltimore City shall provide Plaintiffs copies of its applications for all such permits, licenses, or other authorizations, and shall notify Plaintiffs when all such permits, licenses, or other authorizations are obtained.

173. For both facilities, simultaneously with the installation of the signs required under Paragraph 172, Baltimore City shall install a red light next to, or on top of each sign that indicates when the plant experiences any by-pass as defined by the Discharge Permits. During a by-pass the red light shall be illuminated for the duration of such by-pass and for 24 hours thereafter. In addition to noting the presence of the outfall, the sign required under Paragraph 172 shall contain the following clearly legible language: "The red light on this sign is illuminated during a wastewater treatment by-pass event and for 24 hours thereafter."

F. Third-Party Engineering Assessment

174. Baltimore City shall consult with the Plaintiffs and retain or engage a qualified, independent third-party engineer, to conduct an update to the comprehensive assessment of the Back River and Patapsco WWTPs prepared by Greeley and Hansen ("G&H") in June 2022, and to submit a report, signed and sealed by the licensed professional engineer, summarizing the findings simultaneously and directly to all Parties within 90 days of the Effective Date. The updated assessment shall describe the status of the recommendations made in the June 2022 G&H reports regarding the facilities' operations, maintenance, management, staffing, capital improvement needs, and technical status. The report should also include any recommendations for additional actions, including additional or improved automation of processes, that in the opinion of the independent, third-party engineer are needed to maintain permit compliance. Thereafter, the engineer shall provide a quarterly written update on all of the above simultaneously to all Parties. In the event that any draft report or updates are generated and submitted to any Party, such report or updates shall be clearly marked as drafts and submitted simultaneously to all Parties. The report and the updates are intended to allow for real-time determination of the Parties as to whether reprioritization of work or deadline extension for the corrective actions are warranted and to ensure compliance with the terms of this Consent Decree and the Permits. The reports do not, on their own, modify any plan or schedule established pursuant to this Consent Decree. Baltimore City shall require the

independent, third-party engineer to be available to speak with the Parties to discuss its reports upon Plaintiffs' request. This clause shall remain in effect until either this Consent Decree is terminated or a new Permit has been issued requiring third-party engineering assessments evaluating the same parameters with at least the same frequency as described in this paragraph.

G. Final Confirmation Report

175. Within 90 days of completion of the activities, excluding routine maintenance, identified in Section III.D (Work To Be Performed), Baltimore City shall submit a Final Confirmation Report to Plaintiffs.

176. The Final Confirmation Report is subject to review and approval pursuant to Section III.A (Review and Approval Process). The Final Confirmation Report is not intended to impose requirements beyond those outlined in Section III.D.

177. After consultation with Blue Water Baltimore and review of the Final Confirmation Report, the Department shall provide a written Completion of Work Acknowledgment to Baltimore City if the Department agrees, in consultation and coordination with Blue Water Baltimore, with Baltimore City's determination that the work is complete. The Department shall provide the Completion of Work Acknowledgement together with its approval of Baltimore City's Final Confirmation Report.

H. Modification of Work To Be Performed

178. Any request to modify an approved submittal under Section III (Work To Be Performed) shall be made in writing at least 10 days prior to expiration of the required deadline.

179. Except as provided below, any request to modify an approved Submittal shall be made to both the Department and Blue Water Baltimore and shall be subject to the review and approval process in Section III.A (Review and Approval Process).

180. Any request to modify work shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Consent Decree and/or as set forth in any approved Submittals during the pendency of the Department's consideration of the request, nor shall it stay the accrual of stipulated penalties unless agreed to by the Parties. MDE shall use best efforts to respond to a request to modify in writing within 60 days from receipt of a complete request. A failure by MDE to respond in writing to a request to modify within 60 days shall not constitute approval of any such request.

I. Additional Necessary Approvals

181. Nothing in this Consent Decree relieves Baltimore City of any obligation to obtain any local, State, or federal approvals or permits that may be required to accomplish the work in this Section III (Work to be Performed).

IV. ACCESS TO THE WWTPs

182. The Department and any authorized representatives of the Department, including contractors, are authorized to enter the WWTPs property at all reasonable times upon presentation of credentials and other documents as may be required by law, for the purposes of, *inter alia*, interviewing Baltimore City's personnel and contractors performing work under this Consent Decree, inspecting non-privileged records related to the work performed hereunder, reviewing the progress of Baltimore City in carrying out the terms of the Consent Decree, conducting such tests, sampling, or monitoring as the Department deems necessary, using a camera, sound recording, or other documentary-type equipment, and verifying reports and data submitted to the Department. Baltimore City shall permit the Department or the authorized representatives of the Department to inspect and copy non-privileged records, files, photographs, documents, and other writings, including sampling and monitoring data, that pertain to the work undertaken pursuant to this Consent Decree. Nothing herein shall be interpreted as limiting the inspection authority of the Department under Maryland law. The Department agrees that it and its authorized representatives will comply with all applicable laws, regulations, ordinances, or procedures related to access to the WWTPs, including, but not limited to, all security laws, regulations,

or procedures, and any site-related health and safety protocols and procedures established by Baltimore City.

183. At the request of the Department, Baltimore City shall allow the Department, or an authorized representative of the Department, to take split or duplicative samples of any sample collected by Baltimore City pursuant to this Decree. Similarly, at the request of Baltimore City, the Department shall allow Baltimore City to take split or duplicative samples of any sample collected by the Department or its authorized representatives. The Department shall notify Baltimore City at least five business days before conducting any sampling pursuant to this Consent Decree unless an emergency makes advance notice impracticable.

184. Nothing herein shall be interpreted as limiting the sampling authority of the Department under any federal or State law or regulation or permit.

V. NO ADMISSION BY BALTIMORE CITY

185. Without making any admission of law or fact and without admitting any violation of any law or regulation, Baltimore City denies that it has willfully or negligently violated any provision of water pollution control laws. Baltimore City further alleges that at all times it has acted in good faith to comply with water pollution control laws and that any failures to comply were due to extenuating circumstances.

VI. STIPULATED PENALTIES

186. Beginning on the Effective Date and continuing until the Department provides Baltimore City a written Completion of Work Acknowledgement, upon 30 days

of written demand by the Department, Baltimore City shall pay stipulated penalties in accordance with the criteria set forth in this Section.

187. Baltimore City shall calculate all stipulated penalties that have accrued under this Consent Decree and include in the quarterly progress reports required by Section III.E. all stipulated penalties that have accrued during the applicable reporting quarter and the basis for the calculation of such penalties. Baltimore City shall include in the report, at a minimum, the paragraph of this Consent Decree that has been violated, the date and duration of such violation, and an explanation of the nature and facts establishing such violation. If Baltimore City claims that any noncompliance giving rise to stipulated penalties is due to an event of *force majeure* as forth in this Consent Decree, or requests the Department reduce or waive any stipulated penalties, the quarterly progress report must contain an explanation of the basis for such claim or request. Failure to claim *force majeure* or request a reduction or waiver in the applicable quarterly report may be the basis for a denial of such claim or request. The Department is not bound by Baltimore City's calculation of stipulated penalties; rather, it may make an independent determination of the amount of stipulated penalties that have accrued in accordance with this Section.

188. If Baltimore City fails to meet any deadline or schedule under this Consent Decree, including those set forth in plans incorporated herein, Baltimore City shall pay $1,000 per day of non-compliance for the first one to 30 days of noncompliance, $2,500

per day of non-compliance between 31 and 60 days, and $6,000 per day of non-compliance thereafter until the requirement is met.

189. If the Back River WWTP or Patapsco WWTP have any effluent sample values that exceed any Effluent Limitation then in effect, Baltimore City shall pay the amounts below for each Effluent Limitation that is exceeded:

Daily:	$100
Weekly:	$250
Monthly:	$500
Quarterly:	$750

If the Back River WWTP or Patapsco WWTP exceed any of the TN, TP, or TSS Tributary strategy-based or, if applicable, concentration-based annual maximum loading limits, Baltimore City shall pay $500 per day for each TN, TP, or TSS annual maximum loading limit exceedance, beginning on the first day the Back River WWTP or Patapsco WWTP exceeds the limit(s) and continuing each day through the end of that calendar year. If the Patapsco WWTP or Back River WWTP at Outfall 002 exceeds any of the TN or TP seasonal (May through October) maximum loading limits, Baltimore City shall pay $500 per day for each TN or TP seasonal load limit exceedance, beginning on the first day the Patapsco WWTP or Back River WWTP at Outfall 002 exceeds the limit(s) and continuing each day through October 31st of that year.

190. If Baltimore City fails to conduct any monitoring, testing, or DMR reporting, including failures to monitor or test in accordance with applicable procedures or failures to

submit attachments to DMRs, required by any Discharge Permit then in effect at Back River WWTP or Patapsco WWTP, Baltimore City shall pay $250 per day of non-compliance for each instance of noncompliance for the first one to seven days of noncompliance, $500 per day of noncompliance between eight and 120 days, and $1,000 per day of noncompliance thereafter until the monitoring, testing, or DMR reporting requirement is met; provided, however, that for any monitoring or testing requirement applicable to a specific period of time, Baltimore City shall not be required to pay for days of non-compliance beyond the applicable period of time for such monitoring or testing requirement.

191. If Baltimore City fails to report to the Department Permit noncompliance in accordance with III.B.1., including but not limited to any effluent violations, unauthorized discharges, or laboratory sampling errors that result in invalid test results, Baltimore City shall pay $250 for each failure to report.

192. If the Back River WWTP or Patapsco WWTP have any discharges that are not authorized by a Discharge Permit then in effect, Baltimore City shall pay $10,000 per incident per day per violation.

193. Failure to meet more than one date or submission requirement shall subject Baltimore City to cumulative penalties for each day that each separate requirement is not met by its due date.

194. Payment of stipulated penalties shall be made by check payable to the Maryland Department of the Environment and mailed to the following address: Maryland Department of the Environment, P.O. Box 2057, Baltimore, Maryland 21230-2057. The following must be noted on the check: *State of Maryland, Department of the Environment v. Mayor & City Council of Baltimore*, *Maryland*, PCA:13710, OBJ: 7545, SFX: 408, GL: 0544, MDE Case No. CJ-24-2951.

195. All stipulated penalties begin to accrue on the date that complete performance was due, or a violation occurs and shall continue to accrue through the final day of noncompliance. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

196. Stipulated penalties shall continue to accrue as provided in this Section during Dispute Resolution pursuant to Section XXI (Dispute Resolution) but need not be paid until 30 days after final resolution of the dispute, including resolution of any judicial appeal.

197. Except as otherwise expressly set forth in this Consent Decree, none of the stipulated penalties in this Consent Decree shall be construed as an election of remedy or other limitation on the Department's discretion to seek in lieu of stipulated penalties any other remedy or sanction available to it for violations of this Consent Decree or any other violation of State law or regulation not expressly made the subject of this Consent

Decree. The Department's failure to demand any stipulated penalty under this Consent Decree does not constitute a waiver of the Department's right to make such a demand.

198. Except as otherwise expressly set forth in this Consent Decree, payment of any stipulated penalty shall not relieve Baltimore City from the obligations imposed by this Consent Decree, or any permit that may be issued or any other statute or regulation, nor shall such payment limit the right of the Department or Blue Water Baltimore to seek enforcement, including all judicially available remedies, of the terms of this Consent Decree or any other statute or regulation.

199. The Department may, in its discretion, reduce or waive any stipulated penalty if it determines that noncompliance is due to an event of *force majeure* as set forth in this Consent Decree, or for any other reason deemed appropriate by the Department.

200. Failure to pay any stipulated penalty as required by this Consent Decree may result in this case being referred to the State of Maryland's Central Collection Unit ("Central Collection Unit") as a debt owed to the State. The Central Collection Unit is authorized to collect outstanding debts resulting from unpaid penalties. The Central Collection Unit will add a collection fee of 17%, plus interest, to the amount owed by Baltimore City. In addition, § 3-304(c) of the State Finance and Procurement Article authorizes the Central Collection Unit to report the debt to consumer reporting agencies.

VII. CIVIL PENALTIES

201. A judgment is entered in favor of the Maryland Department of the Environment, against Baltimore City, in the total amount of $4,750,000 ("Total Penalty"), of which $3,750,000 shall be attributable to the violations occurring at the Back River WWTP, and $1,000,000 shall be attributable to the violations occurring at the Patapsco WWTP. The judgment shall be paid in accordance with the following provisions of this Section VII (Civil Penalties).

202. By July 31, 2025, Baltimore City shall pay to the Department 30 percent of the Total Penalty ($1,425,000) ("Initial Penalty"). Payment shall be made in three equal installments of $475,000, due on November 30, 2023, July 31, 2024, and July 31, 2025, with checks made payable to the "Maryland Department of the Environment," and mailed to: Maryland Department of the Environment, P. O. Box 2057, Baltimore, Maryland 21230-2057. The checks and any accompanying correspondence must reference *State of Maryland, Department of the Environment v. Mayor & City Council of Baltimore, Maryland*, PCA: 13710, OBJ: 7545, SFX: 408, GL: 0544, MDE Case No. CJ-24-2951. Invoices for payment of the penalty will be mailed to Baltimore City; however, the lack of receipt of an invoice has no effect on Baltimore City's obligation to make timely payments under the Consent Decree. A copy of the check shall also be mailed to: Jonathan E.C. May, Assistant Attorney General, Maryland Department of the Environment, 1800 Washington Boulevard, Suite 6048, Baltimore, Maryland 21230. In addition, 30 percent

of the Total Penalty ($1,425,000) ("Penalty Held in Abeyance") shall be held in abeyance for a period of two years from the Effective Date, and shall only become due and owing if Baltimore City has failed to timely complete any corrective actions required to be completed as of that date in accordance with the applicable deadlines, including any extensions approved by the Department, set forth in Section III.D of this Consent Decree. If the Penalty Held in Abeyance becomes due, Baltimore City shall pay the penalty within 30 days thereafter in accordance with the instructions of this paragraph.

203. Baltimore City shall satisfy its obligation to pay the remaining 40 percent of the Total Penalty dollars ($1,900,000) ("SEP Payment") through the completion of the Patapsco and Back River Watershed Water Quality Improvement and Restoration Supplemental Environment Project ("Patapsco and Back River SEP") pursuant to the instructions set forth in Paragraph 204.

204. Baltimore City shall complete the Patapsco and Back River SEP, which the Plaintiffs believe will secure significant environmental and public health benefits, in accordance with the following:

a. The Patapsco and Back River SEP shall consist of: (i) a directed contribution in three equal installments on November 30, 2023, July 31, 2024, and July 31, 2025, totaling the amount of the SEP Payment by Baltimore City to the Chesapeake Bay Trust ("CBT"), which is a nonprofit entity established by the Maryland General Assembly in 1985 to promote public awareness and

participation in the restoration and protection of the water quality, aquatic and land resources of the Chesapeake Bay, and other aquatic and land resources of the State, and is authorized to contract with other units of State Government, including the Department; and (ii) follow-up reporting.

b. Baltimore City's contribution to CBT shall be for the purpose of funding water quality improvement and restoration projects in the Patapsco and Back River watersheds that have a reasonable nexus to water quality impacts associated with violations of the Back River and Patapsco WWTP Discharge Permits that are the subject of this Consent Decree.

c. Baltimore City and the Department shall enter into a separate agreement with CBT, in substantially the same form as Exhibit 20, consistent with this Section VII, which shall: (i) document Baltimore City's contribution, which shall be held by CBT in a dedicated fund; (ii) provide that CBT will award competitive grants from the dedicated fund, subject to the approval of the Department and after providing for public participation, to non-profit organizations, community associations, academic institutions, individual homeowners, and state and local governments for the completion of projects in order to carry out the purpose of the Patapsco and Back River SEP; (iii) provide that the Trust shall ensure that funds are awarded for projects in both the Patapsco and Back River watersheds, and shall endeavor to allocate at

least $300,000 in awards for projects in the Patapsco River watershed, and $600,000 in awards for projects in the Back River watershed; (iv) provide for a reporting requirement by which CBT shall submit timely reports to the Department and the City on its expenditure of Baltimore City's contribution and any balance remaining in the dedicated fund; and (v) provide that, if any amount of the SEP Payment remains unawarded by CBT on the seventh anniversary of the Effective Date, that amount shall revert to the Department as a civil penalty in accordance with this Consent Decree. The termination of the Consent Decree is not contingent on CBT's award of funds.

205. Baltimore City shall not deduct any payments, or SEP costs, made under this Consent Decree pursuant to this Section or Section VI (Stipulated Penalties) in calculating federal tax, as they are penalties within the meaning of § 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not tax-deductible expenditures for purposes of federal law. In addition, Baltimore City shall not deduct any payments, or SEP costs, made under this Consent Decree pursuant to this Section or Section VI (Stipulated Penalties) in calculating its State or local income tax. In addition, any statement, publication, or other material published or distributed by Baltimore City or on Baltimore City's behalf referencing the SEP shall include a statement that "this project was required as the result of an enforcement action by the State of Maryland."

206. Failure to pay any civil penalty as required by this Consent Decree may result in this case being referred to the Central Collection Unit as a debt owed to the State. The Central Collection Unit is authorized to collect outstanding debts resulting from unpaid penalties. The Central Collection Unit will add a collection fee of 17%, plus interest, to the amount owed by Baltimore City. In addition, § 3-304(c) of the State Finance and Procurement Article authorizes the Central Collection Unit to report the debt to consumer reporting agencies.

VIII. BLUE WATER BALTIMORE'S FEES AND COSTS

207. Baltimore City will reimburse Blue Water Baltimore $400,000 for its reasonable attorneys' fees, costs, and expert fees and expenses regarding the respective claims alleged. Within 30 days of the Effective Date, Blue Water Baltimore agrees to send to Baltimore City an invoice or invoices. Baltimore City shall pay the amount in the invoice(s) within 30 days of receipt of the invoice(s).

IX. PERSONS BOUND BY ORDER

208. This Consent Decree applies to, is binding upon, and inures to the benefit of the Plaintiffs (and their successors, assigns, and designees) and Baltimore City (and its successors, assigns, and designees). This Consent Decree shall be applicable and binding upon any person, entity, agency, local government, or other authority that operates the WWTPs, or any subsequent purchaser(s) of the WWTPs. Any change in the ownership of the WWTPs or the corporate status of Baltimore City, including, but not limited to, any

transfer of Baltimore City's assets or real or personal property, shall not alter Baltimore City's responsibilities under this Consent Decree. Baltimore City shall condition all contracts or agreements in connection with the transfer of the WWTPs on compliance with the terms of this Consent Decree. Baltimore City is obligated to ensure necessary instruction to the employees regarding the employees' scope of work involving compliance with this Consent Decree and laws and regulations applicable to the WWTPs.

209. Baltimore City shall provide at least 20 days in advance written notice to the Department and Blue Water Baltimore prior to the transfer or change in ownership of the WWTPs. Baltimore City shall provide a written agreement, indicating the specific date of the proposed transfer, which acknowledges the responsibilities of the current owner and new owner for compliance with the terms and conditions of this Consent Decree.

210. Baltimore City shall provide at least 15 days in advance written notice to the Department and Blue Water Baltimore prior to the filing of any petition or the commencement of any proceeding arising under the Bankruptcy Code, 11 U.S.C. §§ 1101 through 1195.

X. RELEASE

211. Upon the full completion of all the obligations set forth in this Consent Decree, the Department and Blue Water Baltimore agree to release Baltimore City and the City's respective officers, elected or appointed officials, employees, agents, and representatives from any civil liability for the violations described herein. Upon entry by

the Court of this Consent Decree, the Department and Blue Water Baltimore agree to refrain from pursuing or continuing any civil enforcement action against Baltimore City or its respective officers, elected or appointed officials, employees, agents, and representatives for violations described in this Consent Decree or alleged in any of the complaints filed by Plaintiffs in this action or in the Federal Action, including any amendments, or arising out of the facts or circumstances recited in this Consent Decree or alleged in any related complaint, including any amendments. Blue Water Baltimore will dismiss with prejudice the Federal Action within 30 days of entry of this Consent Decree. The Department and Blue Water Baltimore reserve, and this Consent Decree is without prejudice to, all rights against Baltimore City with respect to the following matters: (a) civil and administrative enforcement actions for violations that occur after the Effective Date of this Consent Decree; (b) civil and administrative enforcement actions for violations existing at the time of the Consent Decree that are not described herein, including violations that may be discovered during work performed pursuant to this Consent Decree, which includes, for the avoidance of doubt, any violations that are discovered as a result of the flow investigation and analysis required by Paragraph 164 of this Consent Decree; (c) criminal enforcement actions; (d) violations of any other Federal and State laws or regulations that are not addressed in this Consent Decree; or (e) any violation of the terms of this Consent Decree.

212. It is expressly understood that this Consent Decree pertains to the civil violations described herein, and that the Plaintiffs have made no promises or representations other than those contained in this Consent Decree and that no other promises or representations will be made unless in writing. The Department has made no promises or representations with regard to any criminal liability for the above-referenced violations and has no authority over any criminal actions.

213. Except as provided in the Dispute Resolution provisions of this Consent Decree, no action or decision by the Department pursuant to this Consent Decree shall constitute final agency action giving rise to any right by Baltimore City to seek judicial review prior to the Department's or Blue Water Baltimore's initiation of a judicial action to enforce this Consent Decree, including an action for penalties or an action to compel Baltimore City's compliance with the terms and conditions of this Consent Decree.

214. Nothing in this Consent Decree shall limit the authority of the Department to issue any orders or to take any action it deems necessary to protect public health, safety, or the environment.

215. All factual information provided by Baltimore City to the Department that forms the basis of this Consent Decree is to the best of its knowledge. To the extent that any of the factual information that is material to this Consent Decree provided by Baltimore City is not true and accurate, the Department and Blue Water Baltimore reserve the right

to declare this Consent Decree null and void and to seek any available legal, equitable, administrative, and/or judicial remedies.

XI. THIRD PARTIES

216. Except as provided in Section XI, Release, the Parties intend that nothing in this Consent Decree shall be construed as a release or covenant not to sue any third party not a signatory to this Consent Decree or to affect any right, claim, cause of action or defense of any party hereto with respect to third parties. The Parties specifically reserve any and all rights, defenses, claims, demands, and causes of action, which the Parties may have against any third parties relating in any way to the subject matter of this Consent Decree.

217. Except as provided by law, this Consent Decree does not and is not intended to create any rights, claims, or benefits for any third party or limit any existing rights, claims, or benefits for any third party. No third party shall have any legally enforceable rights, claims, or benefits under this Consent Decree. No act of performance by the Parties, nor forbearance to enforce any term of this Consent Decree by the Department or Blue Water Baltimore, shall be construed as creating any rights, claims, or benefits for any third party.

218. Neither the terms nor the conditions of this Consent Decree, nor any act of performance by the Parties, shall collaterally estop the Department in any other proceeding with any third party not a signatory to this Consent Decree.

XII. EFFECTIVE DATE

219. The Department and Blue Water Baltimore shall execute this Consent Decree first, followed by the Director of the Baltimore City Department of Public Works. The Consent Decree will then be submitted to the Baltimore City Board of Estimates for review and approval. This Consent Decree shall become effective as a contract upon approval by the Board of Estimates ("the Effective Date"). This Consent Decree shall become effective as a Court Order upon entry by the Circuit Court Judge.

XIII. NOTIFICATION

220. Unless otherwise specified, all work plans, reports, correspondence, approvals, notices, or other submissions required by or relating to this Consent Decree shall be submitted via e-mail or, upon written request, by one of the following methods: (a) hand delivery; (b) first class mail; or (c) overnight mail by private courier. Any party may change the method, person, or address applicable to it by providing notice of the change to all Parties. Notice shall be sent to the following:

The Department

Program Manager, WSA Compliance Program

Blue Water Baltimore

Baltimore Harbor Waterkeeper, Blue Water Baltimore

Senior Attorney, Chesapeake Legal Alliance

Baltimore City

Director, Department of Public Works

General Counsel, Department of Public Works

XIV. GENERAL PROVISIONS

221. Each undersigned representative of the Plaintiffs certifies that he or she is fully authorized by the party to enter into and execute the terms and conditions of this Consent Decree and to legally bind such party to this Consent Decree on their behalf. Baltimore City is legally bound upon approval by the Board of Estimates.

222. Baltimore City agrees to undertake and complete all actions required by the terms and conditions of this Consent Decree. In any action by the Department or Blue Water Baltimore to enforce the terms of this Consent Decree, Baltimore City consents to and agrees not to contest the authority or jurisdiction of the Department or Blue Water Baltimore to enforce this Consent Decree and agrees not to contest the validity of this Consent Decree or its terms or conditions. Baltimore City agrees this Consent Decree is a contract and upon entry by the Court, a final order enforceable in a judicial forum. However, nothing in this paragraph prevents Baltimore City from proposing a modification to this Consent Decree.

223. This Consent Decree is not intended to be, nor shall it be construed to be a permit. Baltimore City acknowledges and agrees that the Department's approval of the work and/or work plan does not constitute a warranty or representation that the work and/or

work plan will achieve the required cleanup or performance standards. Compliance by Baltimore City with the terms of this Consent Decree shall not relieve Baltimore City of its obligation to comply with any other applicable local, State, or federal laws and regulations.

224. In the event that Baltimore City fails to comply with any provision of this Consent Decree, including but not limited to failure to complete the work or pay the civil penalty or any stipulated penalties due hereunder, the Department and Blue Water Baltimore shall have the right to seek any and all legal and equitable remedies available to it for any such failure, and all other provisions of this Consent Decree shall remain in full force and effect.

225. The Parties represent that prior to signing this Consent Decree, each has read it, understood its terms and conditions, and consulted with counsel, and that each party has voluntarily signed it.

226. This Consent Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

227. This Consent Decree shall be construed without regard to any presumption or other rule requiring construction against the party causing the Consent Decree to be drafted.

228. This Consent Decree is governed by, and interpreted according to, the laws of the State of Maryland without regard to conflict of laws principles.

XV. SUBSEQUENT MODIFICATION

229. The terms of this Consent Decree are contractual and not mere recitals. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. This Consent Decree may only be modified by the mutual written agreement of all the Parties, and approval of the Court. Upon approval by the Court, this Consent Decree is not only contractual but constitutes a court order. Any minor modifications, as determined by the Department, must be made through written agreement of the Parties. Any major modifications must be approved by the Court in writing.

XVI. SEVERABILITY

230. If any provision or authority of this Consent Decree or the application of this Consent Decree to any party or circumstance is held by any judicial authority to be invalid, the application of such provision or authority to other parties or circumstances and the remainder of this Consent Decree shall not be affected thereby and shall remain in full force.

XVII. TERMINATION

231. Except for the Release contained in Section XI (Release), this Consent Decree shall terminate and be of no further force and effect upon the occurrence of all of

the following events: (a) Baltimore City's payment of the full civil penalty as set forth in Section VII (Civil Penalties); (b) Baltimore City's payment of all stipulated penalties that may be demanded by the Department under this Consent Decree; (c) the Department's approval of the Final Confirmation Report, pursuant to Section III.G (Final Confirmation Report) of this Consent Decree, and issuance of a Completion of Work Acknowledgement, which constitutes the Department's determination that Baltimore City has completed all work obligations set forth in and contemplated by the scope of this Consent Decree; and (d) the payment of agreed upon attorneys' fees as set forth in this Decree. Notwithstanding the foregoing in this Paragraph, the Parties may terminate this Consent Decree at any time by mutual written agreement and the approval of the Court.

XVIII. RECORD RETENTION

232. Baltimore City will retain all documents, including paper and electronic files, relating to this matter for at least three years after termination of this Consent Decree.

XIX. FORCE MAJEURE

233. Baltimore City shall perform the requirements of this Consent Decree in the manner and within the time limits set forth herein, unless the performance is delayed by events or circumstances arising from causes not reasonably foreseeable or beyond the reasonable control of Baltimore City, which cannot be avoided or overcome by due diligence, and which delays or prevents performance in the manner or by a date required by this Consent Decree.

234. Circumstances beyond the reasonable control of Baltimore City include earthquake, flood, hurricane, severe weather or other act of God, war, riot, injunction, fire, pandemic, and compliance with any law, rule, or Decree of any governmental body either existing now or hereafter created that conflicts with the requirements or obligations of this Consent Decree. Such circumstances do not include increased costs of performance, changed economic circumstances, normal inclement weather, or failure to obtain federal, State, or local permits unless Baltimore City has made timely and complete application for such permits.

235. The mere existence of a novel coronavirus and COVID-19 in the state in which the work contemplated by this Consent Decree and plans submitted hereunder does not excuse performance. Baltimore City must take all reasonable steps to mitigate any delay that may occur as a result of the novel coronavirus or COVID-19. Delays attributable to the novel coronavirus or COVID-19 may only constitute a *force majeure* where Baltimore City could not reasonably have taken the known circumstances associated with COVID-19 into account when developing plans and implementation schedules.

236. Within 30 business days after becoming aware that an event Baltimore City believes constitutes an unforeseeable event or circumstance beyond their reasonable control may prevent or delay performance of an obligation under this Consent Decree, Baltimore City shall notify the Department and Blue Water Baltimore of such event. Baltimore City's notification shall describe in detail the precise cause or causes of the

delay, the anticipated length of the delay, the measures taken and to be taken by Baltimore City to prevent or minimize the delay, and a timetable by which those measures will be implemented. Baltimore City shall adopt all reasonable measures to avoid or minimize any such delay. Baltimore City shall include in the notification a request to extend the deadline associated with any obligation under this Consent Decree whose performance may be prevented or delayed by unforeseeable events or circumstances beyond Baltimore City's reasonable control.

237. Failure by Baltimore City to comply with the notice requirements set forth in the preceding Paragraph constitutes a waiver of Baltimore City's right to request an extension of the applicable deadline associated with an obligation to be performed under this Consent Decree.

238. If the Department determines, with input from Blue Water Baltimore, that the event or anticipated event which has caused or will cause the delay constitutes an unforeseeable event or circumstance beyond the control of Baltimore City, the time for performance hereunder shall be extended for an appropriate period of time as determined by the Department, with input from Blue Water Baltimore, but not less than a period of time substantially equal to the length of the necessary delay, and any stipulated penalty shall not accrue. The Department shall inform Baltimore City in writing of its approval or denial and provide Blue Water Baltimore a copy of such notification.

239. In the event the Department, with input from Blue Water Baltimore, and Baltimore City cannot agree that a delay or failure has been or will be caused by a *force majeure* or Excusable Delay event or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with Section XX (Dispute Resolution).

XX. DISPUTE RESOLUTION

240. The dispute resolution procedures of this Section shall be the exclusive mechanism for the Parties to raise and resolve disputes arising under or with respect to this Consent Decree. Nothing herein shall be construed to prohibit the Department or Blue Water Baltimore from exercising any other remedy available at law or in equity to enforce the terms of this Consent Decree, including seeking enforcement of the provisions of this Consent Decree by the Court.

241. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Department, Blue Water Baltimore, and Baltimore City in an attempt to resolve the dispute in a good faith and expeditious manner. A dispute shall be considered to have arisen when one party sends all other parties a written Notice of Dispute. Electronic mail is the preferred delivery method for a Notice of Dispute to the Parties.

242. The Parties shall have 30 days following receipt of a Notice of Dispute to reach agreement, unless this period is extended by written agreement of the Parties. The Parties shall have the right to jointly meet and confer at least once during this 30-day period

(or extended period as agreed by the Parties). If the Parties cannot reach agreement on the disputed issue, the Department shall serve on the other Parties a written statement setting forth its proposed resolution of the dispute within 15 days after expiration of the initial 30-day period (or extended period as agreed by the Parties). The dispute shall be resolved in accordance with the Department's proposed resolution unless, within 60 days after receipt of such proposed resolution, the disputing party files a petition for resolution of the dispute with the Court. Any such petition shall describe the nature of the dispute and the disputing party's proposal for resolution of the dispute. The Department and the non-disputing party shall have 30 days after service of such petition to file a response to the petition.

243. The Court shall have exclusive and continuing jurisdiction to issue any Decree or resolve any dispute arising between or among the Parties with respect to matters within the scope of this Consent Decree. With respect to the resolution of any dispute pursuant to a petition to the Court, the Court shall resolve the dispute in accordance with applicable law.

244. The existence of any dispute initiated under the process provided by this section shall not excuse, toll, or suspend any compliance obligation or deadline required, or stipulated penalty accruing, pursuant to this Consent Decree during the pendency of the dispute resolution process.

XXI. RESERVATION OF RIGHTS

245. The signing of this Consent Decree and each Party's consent shall not limit or otherwise preclude the Department from taking additional action pursuant to the powers granted to it under State and federal law to address violations of laws or regulations not otherwise addressed by this Consent Decree, or to reduce or eliminate risks to public health or the environment that were not known to the Department at the time of approval of this Consent Decree or at the time of approval of work to be performed hereunder.

246. The signing of this Consent Decree and each Party's consent shall not limit or otherwise preclude Blue Water Baltimore from taking action pursuant to State and Federal law to address violations of laws or regulations not otherwise specifically addressed by this Consent Decree, or to reduce or eliminate risks to public health or the environment that were not known to Blue Water Baltimore at the time of approval of this Consent Decree or at the time of approval of work to be performed hereunder.

XXII. U.S. INTERNAL REVENUE SERVICE REPORTING REQUIREMENTS

247. The Parties to this Consent Decree recognize and acknowledge that the Department is required to report certain fines, penalties, and other amounts regarding this Consent Decree to the United States Internal Revenue Service pursuant to 26 U.S.C. § 6050X. The Parties agree to cooperate with the Department in meeting its reporting obligations regarding this Consent Decree, to promptly provide information requested by the Department, and to complete the Information Form attached hereto as Attachment A.

The Parties acknowledge that this Consent Decree is not fully executed until a completed Attachment A is attached.

248. Penalty payments under this Consent Decree pursuant to Section VI (Stipulated Penalties) or Section VIII (Civil Penalties are penalties within the meaning of Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i), and Baltimore City shall not deduct any penalties paid under this Consent Decree pursuant to Section VI (Stipulated Penalties) or Section VII (Civil Penalties) in calculating its federal income tax.

249. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2)(iii)(A), performance of Section III (Work to be Performed) and Section VIII (Attorneys' Fees) is restitution, remediation, or required to come into compliance with the law.

IT IS SO DECREED AND ORDERED this _____ day of _____, 2023:

_____
Judge, Circuit Court for Baltimore City

(Parties' Signatures on Following Pages)

Signature Page for Consent Decree in *State of Maryland, Department of the Environment v. Mayor & City Council of Baltimore*, *Maryland*

FOR THE MARYLAND DEPARTMENT OF THE ENVIRONMENT:

October 27, 2023
DATE

Lee Currey
Director
Water & Science Administration

Approved as to form and legal sufficiency this 27th day of October, 2023:

Jonathan E.C. May
Assistant Attorney General

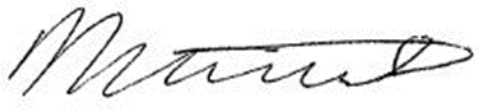
Signature Page for Consent Decree in *State of Maryland, Department of the Environment v. Mayor & City Council of Baltimore*, *Maryland*

FOR BLUE WATER BALTIMORE:



October 27, 2023
DATE

Angela Haren
Senior Attorney
Chesapeake Legal Alliance
Counsel for Blue Water Baltimore



Martin Siegel, Esq.
Barley Snyder
Counsel for Blue Water Baltimore

Signature Page for Consent Decree in *State of Maryland, Department of the Environment v. Mayor & City Council of Baltimore, Maryland*

FOR THE MAYOR AND CITY COUNCIL OF BALTIMORE, MARYLAND:

10/31/2023
DATE

Richard J. Luna
Interim Director
Department of Public Works

Approved as to ~~form and~~ legal sufficiency this 31st day of October, 2023:

~~Darnell~~ E. Ingram
General Counsel

Approved by the Board of Estimates:

Clerk Date

Signature Page for Consent Decree in *State of Maryland, Department of the Environment v. Mayor & City Council of Baltimore, Maryland*

FOR THE MAYOR AND CITY COUNCIL OF BALTIMORE, MARYLAND:

_____ _____

DATE Richard J. Luna
Interim Director
Department of Public Works

Approved as to form and legal sufficiency this _____ day of _____, 2023:

_____
Darnell E. Ingram
General Counsel

Approved by the Board of Estimates:

_____ 11-15-2023

Clerk Date

Attachment A

Information Form

Settling Party's Information:

Full Legal Name:

Tax ID Number:

Address:

City: State:

ZipCode: Phone:

Court & Case Information:

Court/Jurisdiction:

Case Name/Caption:

Case Number:

Settlement Terms:[2]

Amount to be paid as a penalty:

Cost of remediation or restitution:

Cost for compliance:

Total:

Date Signature

Title:

[2] If these amounts are not specified in the settlement agreement, provide your best estimate based upon the information available to you at this time. You will report your actual expenditures on your tax returns.

STATE OF MARYLAND, DEPARTMENT OF THE ENVIRONMENT, ET AL

V.

MAYOR AND CITY COUNCIL OF BALTIMORE, MARYLAND

CASE NO: 24-C-22-000386

EXHIBIT 1

TO

CONSENT DECREE

Consent Decree Exhibit 1: Back River WWTP Effluent Violations
1/1/2017 - 08/31/2023

Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value
05/31/2017	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	223215.
06/30/2017	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	192425.
07/31/2017	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	194026.
04/30/2018	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	393.
05/31/2018	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	112513.
07/31/2018	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	103650.
09/30/2018	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	120550.
	001	E. coli	MX MO GMN	MPN/100mL	126.	146.
03/31/2019	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	240.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	468.
	002	E. coli	MX MO GMN	MPN/100mL	126.	242.
04/30/2019	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	335.
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4
06/30/2019	001	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	11000.	54761.
	001	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	10.	56.
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	229865.
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	233.
07/31/2019	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4
08/31/2019	002	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.22
08/31/2019	002	Phosphorus, total [as P]	MX WK AV	lb/d	125	131.
08/31/2019	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.5
10/31/2019	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	123187.
12/31/2019	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	17.
	002	Chlorine, total residual	MAXIMUM	mg/L	.011	1.5
08/31/2020	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	105102.
09/30/2020	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	108392.
10/31/2020	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	142303.
10/31/2020	002	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.21
12/31/2020	001	Solids, total suspended	MX WK AV	lb/d	16000.	22704.
	001	Solids, total suspended	MX WK AV	lb/d	16000.	18278.
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	298.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	712.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	481.
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4
01/31/2021	001	Solids, total suspended	MX WK AV	lb/d	16000.	17426.
	001	Solids, total suspended	MX WK AV	mg/L	15.	16.
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	241.
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4
	002	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.23
02/28/2021	001	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	11000.	26044.

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Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value
	001	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	10.	20.
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	18077.
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	25746.
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	50488.
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	19.
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	17.
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	35.
	001	Solids, total suspended	MX MO AV	lb/d	11000.	54768.
	001	Solids, total suspended	MX MO AV	mg/L	10.	40.
	001	Solids, total suspended	MX WK AV	lb/d	16000.	31571.
	001	Solids, total suspended	MX WK AV	lb/d	16000.	70938.
	001	Solids, total suspended	MX WK AV	lb/d	16000.	102949.
	001	Solids, total suspended	MX WK AV	mg/L	15.	29.
	001	Solids, total suspended	MX WK AV	mg/L	15.	47.
	001	Solids, total suspended	MX WK AV	mg/L	15.	70.
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	773.
	001	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.6
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	369.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	524.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	530.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	1668.
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.5
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.1
	002	Solids, total suspended	MX WK AV	mg/L	45.	52.
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.9
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.6
02/28/2021	002	Phosphorus, total [as P]	MO AVG	mg/L	.2	.8
03/31/2021	001	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	11000.	25757.
	001	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	10.	21.
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	16725.
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	19321.
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	49153.
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	36.
	001	Solids, total suspended	MX MO AV	lb/d	11000.	53975.
	001	Solids, total suspended	MX MO AV	mg/L	10.	43.
	001	Solids, total suspended	MX WK AV	lb/d	16000.	35020.
	001	Solids, total suspended	MX WK AV	lb/d	16000.	38616.
	001	Solids, total suspended	MX WK AV	lb/d	16000.	118355.
	001	Solids, total suspended	MX WK AV	mg/L	15.	33.

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	001	Solids, total suspended	MX WK AV	mg/L	15.	26.
	001	Solids, total suspended	MX WK AV	mg/L	15.	89.
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	940.
	001	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.8
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	368.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	598.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	878.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	1920.
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.6
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.5
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.5
	001	Toxicity, Chronic	MAXIMUM	tox chronic	1.02	1.2
	002	Solids, total suspended	MX MO AV.	mg/L	30.	36.
	002	Solids, total suspended	MX WK AV	mg/L	45.	64.
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.6
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4
	002	Phosphorus, total [as P]	MO AVG	lb/d	83	118.
	002	Phosphorus, total [as P]	MX WK AV	lb/d	125	245.
03/31/2021	002	Phosphorus, total [as P]	MO AVG	mg/L	.2	.7
04/30/2021	001	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	11000.	22155.
	001	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	10.	22.
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	21833.
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	26343.
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	29777.
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15	28.
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15	19.
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	28.
	001	Solids, total suspended	MX MO AV	lb/d	11000.	41100.
	001	Solids, total suspended	MX MO AV	mg/L	10.	41.
	001	Solids, total suspended	MX WK AV	lb/d	16000.	48626.
	001	Solids, total suspended	MX WK AV	lb/d	16000.	38258.
	001	Solids, total suspended	MX WK AV	lb/d	16000.	25652.
	001	Solids, total suspended	MX WK AV	lb/d	16000.	60228.
	001	Solids, total suspended	MX WK AV	mg/L	15.	37.
	001	Solids, total suspended	MX WK AV	mg/L	15.	28.
	001	Solids, total suspended	MX WK AV	mg/L	15.	43.
	001	Solids, total suspended	MX WK AV	mg/L	15.	64.
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	964.
	001	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.9
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	1065.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	922.

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Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	548.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	1355.
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.9
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.9
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.6
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.4
	001	E. coli	MX MO GMN	MPN/100mL	126.	152.
	002	E. coli	MX MO GMN	MPN/100mL	126.	341.
	002	Phosphorus, total [as P]	MO AVG	lb/d	83	118.
	002	Phosphorus, total [as P]	MX WK AV	lb/d	125	129.
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.7
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.9
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.8
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.8
	002	Phosphorus, total [as P]	MO AVG	mg/L	.2	.8
05/31/2021	001	Solids, total suspended	MX MO AV	lb/d	11000.	15867.
	001	Solids, total suspended	MX MO AV	mg/L	10.	17.
	001	Solids, total suspended	MX WK AV	lb/d	16000.	18600.
	001	Solids, total suspended	MX WK AV	mg/L	15.	16.
	001	Solids, total suspended	MX WK AV	mg/L	15.	21.
	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	168255.
	001	Nitrogen, ammonia total [as N]	MX MO AV	lb/d	2200.	2450.
	001	Nitrogen, ammonia total [as N]	MX MO AV	mg/L	2.	2.7
	001	Nitrogen, ammonia total [as N]	MX WK AV	lb/d	3300.	3658.
	001	Nitrogen, ammonia total [as N]	MX WK AV	mg/L	3.	3.3
	001	Nitrogen, ammonia total [as N]	MX WK AV	mg/L	3.	4.2
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	504.
	001	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.5
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	336.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	421.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	351.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	423.
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.47
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.39
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.5
	001	Phosphorus, total [as P]	MO TOTAL	lb/mo	6652.	14709.
	002	Nitrogen, ammonia total [as N]	MX MO AV	mg/L	2.	3.2
	002	Nitrogen, ammonia total [as N]	MX WK AV	mg/L	3.	4.1
	002	Nitrogen, ammonia total [as N]	MX WK AV	mg/L	3.	4.4
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.6

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Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.5
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.5
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4
	002	Phosphorus, total [as P]	MO AVG	lb/d	83	87.
05/31/2021	002	Phosphorus, total [as P]	MO AVG	mg/L	.2	.6
06/30/2021	001	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	11000.	13267.
	001	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	10.	12.
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	35654.
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	25.
	001	Solids, total suspended	MX MO AV	lb/d	11000.	27839.
	001	Solids, total suspended	MX MO AV	mg/L	10.	21.
	001	Solids, total suspended	MX WK AV	lb/d	16000.	95672.
	001	Solids, total suspended	MX WK AV	mg/L	15.	63.
	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	203420.
	001	Nitrogen, ammonia total [as N]	MX MO AV	lb/d	2200.	3538.
	001	Nitrogen, ammonia total [as N]	MX MO AV	mg/L	2.	3.8
	001	Nitrogen, ammonia total [as N]	MX WK AV	lb/d	3300.	3502.
	001	Nitrogen, ammonia total [as N]	MX WK AV	lb/d	3300.	3379.
	001	Nitrogen, ammonia total [as N]	MX WK AV	lb/d	3300.	3675.
	001	Nitrogen, ammonia total [as N]	MX WK AV	lb/d	3300.	4329.
	001	Nitrogen, ammonia total [as N]	MX WK AV	mg/L	3.	3.1
	001	Nitrogen, ammonia total [as N]	MX WK AV	mg/L	3.	4.2
	001	Nitrogen, ammonia total [as N]	MX WK AV	mg/L	3.	4.2
	001	Nitrogen, ammonia total [as N]	MX WK AV	mg/L	3.	4.7
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	674.
	001	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.6
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	350.
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	1963.
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.3
	001	Phosphorus, total [as P]	MO TOTAL	lb/mo	6652.	15368.
	002	Solids, total suspended	MX WK AV	mg/L	45.	51.
	002	Nitrogen, ammonia total [as N]	MX MO AV	mg/L	2.	4.3
	002	Nitrogen, ammonia total [as N]	MX WK AV	mg/L	3.	4.4
	002	Nitrogen, ammonia total [as N]	MX WK AV	mg/L	3.	3.8
	002	Nitrogen, ammonia total [as N]	MX WK AV	mg/L	3.	4.6
	002	Nitrogen, ammonia total [as N]	MX WK AV	mg/L	3.	5.1
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.36
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.09
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.53
	002	Phosphorus, total [as P]	MX WK AV	lb/d	125	222.

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Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value
	002	Phosphorus, total [as P]	MO AVG	lb/d	83	106.
06/30/2021	002	Phosphorus, total [as P]	MO AVG	mg/L	.2	.5
07/31/2021	001	Solids, total suspended	MX MO AV	mg/L	10.	11.
	001	Solids, total suspended	MX WK AV	mg/L	15.	17.
	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	129076.
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	298.
	001	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.4
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	491.
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.33
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.31
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.6
	001	Phosphorus, total [as P]	MO TOTAL	lb/mo	6652.	9165.
	002	Solids, total suspended	MX WK AV	mg/L	45.	49.
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.45
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.14
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.37
	002	Phosphorus, total [as P]	MX WK AV	lb/d	125	222.
	002	Phosphorus, total [as P]	MO AVG	lb/d	83	102.
07/31/2021	002	Phosphorus, total [as P]	MO AVG	mg/L	.2	.5
08/31/2021	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	133628.
	002	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.51
	002	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.25
09/30/2021	1	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782	147437
	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	0.21
	2	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.42
	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.21
10/31/2021	1	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782	144023
	2	E. coli	MX MO GMN	MPN/100mL	126	138
	2	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.32
	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.26
12/31/2021	1	Phosphorus, total [as P]	MX MO AV	lb/d	220	279
	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	0.37
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	437
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.58
	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.43
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.4
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.35
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.57
01/31/2022	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	0.64
	1	Phosphorus, total [as P]	MX MO AV	lb/d	220	581
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.72

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Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.72
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.92
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	784
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	618
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	792
	1	Solids, total suspended	MX MO AV	mg/L	10	17
	1	Solids, total suspended	MX MO AV	lb/d	11000	15490
	1	Solids, total suspended	MX WK AV	mg/L	15	33
	1	Solids, total suspended	MX WK AV	lb/d	16000	27437
	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.57
	2	Phosphorus, total [as P]	MO AVG	lb/d	83	91
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.66
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.5
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.91
	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	145
02/28/2022	1	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	10	11
	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	1.07
	1	Phosphorus, total [as P]	MX MO AV	lb/d	220	1055
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	1.55
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	1.08
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.78
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.87
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	1709
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	920
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	705
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	884
	1	Solids, total suspended	MX MO AV	mg/L	10	19
	1	Solids, total suspended	MX MO AV	lb/d	11000	19165
	1	Solids, total suspended	MX WK AV	mg/L	15	30
	1	Solids, total suspended	MX WK AV	mg/L	15	18
	1	Solids, total suspended	MX WK AV	mg/L	15	18
	1	Solids, total suspended	MX WK AV	lb/d	16000	32463
	1	Solids, total suspended	MX WK AV	lb/d	16000	19063
	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	1.57
	2	Phosphorus, total [as P]	MO AVG	lb/d	83	242
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	2.32
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	1.18
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.74
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	1.57
	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	360
	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	180

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Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value
	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	242
	2	Solids, total suspended	MX MO AV	mg/L	30	32
03/31/2022	1	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	10	14
	1	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	11000	12621
	1	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15	22
	1	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15	17
	1	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000	19735
	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	1.45
	1	Phosphorus, total [as P]	MX MO AV	lb/d	220	1293
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	1.27
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	2.97
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	1.16
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.53
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	1219
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	2705
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	961
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	453
	1	Solids, total suspended	MX MO AV	mg/L	10	14
	1	Solids, total suspended	MX MO AV	lb/d	11000	12122
	1	Solids, total suspended	MX WK AV	mg/L	15	19
	1	Solids, total suspended	MX WK AV	lb/d	16000	16506
	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	1.42
	2	Phosphorus, total [as P]	MO AVG	lb/d	83	215
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	2.56
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	1.21
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.38
	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	373
	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	197
04/30/2022	1	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000	17833
	1	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15	16
	1	pH	MINIMUM	SU	6.5	6.3
	1	Phosphorus, total [as P]	MX MO AV	lb/d	220	687
	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	0.65
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	1852
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	462
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	1.63
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.47
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.32
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.31
	2	pH	MINIMUM	SU	6.5	6.4
	2	Phosphorus, total [as P]	MO AVG	lb/d	83	87

Consent Decree Exhibit 1: Back River WWTP Effluent Violations
1/1/2017 - 08/31/2023

Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value
	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.56
	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	219
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	1.36
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.41
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.35
05/31/2022	1	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782	160625
	1	Phosphorus, total [as P]	MX MO AV	lb/d	220	293
	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	0.28
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	504
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.4
	1	Phosphorus, total [as P]	MO TOTAL	lb/mo	6652	9085
	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.25
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.39
4/30/2023	1	Phosphorus, total [as P]	WKLY AVG	lb/d	330	484
	1	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.44
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.5
	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.22

STATE OF MARYLAND, DEPARTMENT OF THE ENVIRONMENT, ET AL

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EXHIBIT 2

TO

CONSENT DECREE

Annual Totals Worksheet v11.6

Consent Decree Exhibit 2: Back River WWTP, Outfall 001		MD0021555			2021			*Gray Cells Require Data Input*		
Month	Flow	Nitrogen			Phosphorous			Total Suspended Solids		
	Mo. Totals (MG)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)
January	4005.5	4.2	140304.65	140304.65	0.2	6681.17	6681.17	9	300652.83	300652.83
February	4033.8	6.1	205215.54	345520.20	0.6	20185.14	26866.31	40	1345675.68	1646328.51
March	4340.6	7.5	271504.53	617024.73	0.8	28960.48	55826.79	43	1556625.97	3202954.48
April	3660.4	8	244221.89	861246.61	0.9	27474.96	83301.75	41	1251637.18	4454591.66
May	3295.5	6	164906.82	1026153.43	0.5	13742.24	97043.99	17	467235.99	4921827.65
June	3350.3	7.1	198384.66	1224538.10	0.6	16764.90	113808.89	21	586771.54	5508599.19
July	3074.6	5	128210.82	1352748.92	0.4	10256.87	124065.76	11	282063.80	5790662.99
August	3102.3	5.1	131953.23	1484702.15	0.2	5174.64	129240.39	8.2	212160.09	6002823.09
September	3266.8	5.2	141674.58	1626376.73	0.2	5449.02	134689.42	9	245206.01	6248029.09
October	3237.9	5.3	143121.66	1769498.38	0.2	5400.82	140090.23	5	135020.43	6383049.52
November	2896.1	3.4	82121.81	1851620.20	0.14	3381.49	143471.72	4.1	99029.24	6482078.77
December	2805.6	6	140392.22	1992012.42	0.37	8657.52	152129.24	9	210588.34	6692667.10
Annual Totals:	**41069.400**		**1992012.42**			**152129.24**			**6692667.10**	
Comments:		Interim Limit			Interim Limit			Interim Limit		
		Tributary Strategy Limit	1582055		Tributary Strategy Limit	79277		**Tributary Strategy Limit**	**3959228**	
		Annual Average Requirement	4		Annual Average Requirement	0.2		Annual Average Requirement		
		Floating Cap	**1370075.18**		**Floating Cap**	**68503.76**		Floating Cap	n/a	
		Month of Exceedance	August		Month of Exceedance	April		Month of Exceedance	April	
			5	*(calculated)*		14	*(calculated)*		19	*(calculated)*
		Excedence Date in August		*(from MOR)*	Excedence Date in April		*(from MOR)*	Excedence Date in April		*(from MOR)*
		Days Non-Compliant in 2021	149		Days Non-Compliant in 2021	262		Days Non-Compliant in 2021	257	
		Loading Exceedance in 2021	621937.24		Loading Exceedance in 2021	83625.48		Loading Exceedance in 2021	2733439.10	

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EXHIBIT 3

TO

CONSENT DECREE

Annual Totals Worksheet v11.6

Consent Decree Exhibit 3, Back River WWTP, Outfall 002		MD0021555			2021			*Gray Cells Require Data Input		
Month	Flow	Nitrogen			Phosphorous			Total Suspended Solids		
	Mo. Totals (MG)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)
January	586.1	4.3	21018.72	21018.72	0.2	977.61	977.61	7	34216.52	34216.52
February	550.5	6.2	28465.25	49483.97	0.8	3672.94	4650.55	25	114779.25	148995.77
March	589.1	7.1	34882.97	84366.94	0.7	3439.17	8089.72	36	176871.38	325867.15
April	548.5	7.8	35681.02	120047.96	0.8	3659.59	11749.31	29	132660.21	458527.36
May	565.4	5.9	27821.07	147869.03	0.6	2829.26	14578.57	16	75446.98	533974.34
June	683.9	6.9	39355.71	187224.74	0.5	2851.86	17430.43	18	102667.07	636641.41
July	727.8	5.1	30956.25	218180.99	0.5	3034.93	20465.36	19	115327.19	751968.59
August	715	5.1	30411.81	248592.80	0.2	1192.62	21657.98	6	35778.60	787747.19
September	603.5	5.1	25669.27	274262.07	0.21	1056.97	22714.95	10	50331.90	838079.09
October	634.5	5.4	28575.34	302837.41	0.26	1375.85	24090.80	7	37042.11	875121.20
November	576.8	3.5	16836.79	319674.20	0.16	769.68	24860.48	6	28863.07	903984.28
December	608	6	30424.32	350098.52	0.43	2180.41	27040.89	13	65919.36	969903.64
Annual Totals:	**7389.100**		**350098.52**			**27040.89**			**969903.64**	
Comments:		Interim Limit			Interim Limit			Interim Limit		
		Tributary Strategy Limit	1582055		Tributary Strategy Limit	79277		Tributary Strategy Limit	3959228	
		Annual Average Requirement	4		Annual Average Requirement	0.2		Annual Average Requirement		
		Floating Cap	**246500.38**		**Floating Cap**	**12325.02**		Floating Cap	n/a	
		Month of Exceedance	August		Month of Exceedance	May		Month of Exceedance	n/a	
			29	*(calculated)*		7	*(calculated)*		n/a	*n/a*
		Excedence Date in August		*(from MOR)*	Excedence Date in May		*(from MOR)*	n/a		*n/a*
		Days Non-Compliant in 2021	.125		Days Non-Compliant in 2021	239		n/a	n/a	
		Loading Exceedance in 2021	103598.15		Loading Exceedance in 2021	14715.87		n/a	n/a	

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EXHIBIT 4

TO

CONSENT DECREE

Annual Totals Worksheet v11.6

Back River WWTP, Outfall 001				MD0021555			2022		*Gray Cells Require Data Input		
Month	Flow	Nitrogen			Phosphorous				Total Suspended Solids		
	Mo. Totals (MG)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)		Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)
January	3247.2	6.5	176030.71	176030.71	0.64	17332.25	17332.25		17	460388.02	460388.02
February	3107.4	8.9	230649.87	406680.58	1.07	27729.82	45062.07		19	492398.60	952786.62
March	3264.4	10.6	288586.02	695266.60	1.45	39476.39	84538.46		14	381151.34	1333937.96
April	3343.9	6.8	189639.26	884905.86	0.65	18127.28	102665.74		8	223105.01	1557042.97
May	3583.1	5.3	158380.19	1043286.05	0.28	8367.26	111033.00		8	239064.43	1796107.40
June	3284.4	3.2	87654.07	1130940.11	0.15	4108.78	115141.78		0	0.00	1796107.40
July	3245.4	3	81199.91	1212140.02	0.12	3248.00	118389.78		0	0.00	1796107.40
August	3102.7	2.9	75041.90	1287181.92	0.16	4140.24	122530.02		0	0.00	1796107.40
September	3083.7	2.1	54007.92	1341189.84	0	0.00	122530.02		1.8	46292.50	1842399.91
October	3368.2	2.3	64608.81	1405798.66	0	0.00	122530.02		2	56181.58	1898581.48
November	2998.2	2.2	55010.97	1460809.63	0	0.00	122530.02		2	50009.98	1948591.46
December	3558.8	3	89041.18	1549850.81	0	0.00	122530.02		2	59360.78	2007952.24
Annual Totals:	**39187.400**		**1549850.81**			**122530.02**					**2007952.24**
Comments:		Interim Limit			Interim Limit				Interim Limit		
		Tributary Strategy Limit	1582055		Tributary Strategy Limit	79277			Tributary Strategy Limit	3959228	
		Annual Average Requirement	4		Annual Average Requirement	0.2			Annual Average Requirement		
		Floating Cap	**1307291.66**		**Floating Cap**	**65364.58**			Floating Cap	n/a	
		Month of Exceedance	September		Month of Exceedance	March			Month of Exceedance	n/a	
		Excedence Date in September	12	*(calculated)*	Excedence Date in March	16	*(calculated)*		n/a	n/a	*n/a*
				(from MOR)			*(from MOR)*		n/a		*n/a*
		Days Non-Compliant in 2022	111		Days Non-Compliant in 2022	291			n/a	n/a	
		Loading Exceedance in 2022	242559.14		Loading Exceedance in 2022	57165.44			n/a	n/a	

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EXHIBIT 5

TO

CONSENT DECREE

Annual Totals Worksheet v11.6

Back River WWTP, Outfall 002				MD0021555			2022		*Gray Cells Require Data Input		
Month	Flow	Nitrogen			Phosphorous				Total Suspended Solids		
	Mo. Totals (MG)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)		Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)
January	590	6.2	30507.72	30507.72	0.57	2804.74	2804.74		19	93491.40	93491.40
February	315.7	10.4	27382.56	57890.28	1.57	4133.71	6938.45		32	84254.02	177745.42
March	431.9	10.8	38902.10	96792.37	1.42	5114.91	12053.36		22	79245.01	256990.43
April	554.1	6.5	30037.76	126830.13	0.56	2587.87	14641.23		10	46211.94	303202.37
May	557.8	5.2	24190.67	151020.80	0.25	1163.01	15804.24		8	37216.42	340418.78
June	442.8	3.1	11448.15	162468.95	0.14	517.01	16321.25		0	0.00	340418.78
July	555.3	3	13893.61	176362.56	0.13	602.06	16923.31		0	0.00	340418.78
August	604.1	2.7	13603.12	189965.68	0.15	755.73	17679.04		0	0.00	340418.78
September	583.4	2	9731.11	199696.80	0	0.00	17679.04		2	9731.11	350149.90
October	585.9	2.2	10750.09	210446.89	0	0.00	17679.04		1	4886.41	355036.30
November	569.7	2.1	9977.73	220424.62	0	0.00	17679.04		1	4751.30	359787.60
December	589	2.8	13754.33	234178.94	0	0.00	17679.04		3	14736.78	374524.38
Annual Totals:	**6379.700**		**234178.94**			**17679.04**					**374524.38**
Comments:		Interim Limit			Interim Limit				Interim Limit		
		Tributary Strategy Limit	610748		Tributary Strategy Limit	30363			Tributary Strategy Limit	4589026	
		Annual Average Requirement	4		Annual Average Requirement	0.2			Annual Average Requirement		
		Floating Cap	**212826.79**		**Floating Cap**	**10641.34**			Floating Cap	n/a	
		Month of Exceedance	November		Month of Exceedance	March			Month of Exceedance	n/a	
		Excedence Date in November	8	*(calculated)*	Excedence Date in March	23	*(calculated)*		n/a	n/a	*n/a*
				(from MOR)			*(from MOR)*		n/a		*n/a*
		Days Non-Compliant in 2022	54		Days Non-Compliant in 2022	284			n/a	n/a	
		Loading Exceedance in 2022	21352.15		Loading Exceedance in 2022	7037.70			n/a	n/a	

STATE OF MARYLAND, DEPARTMENT OF THE ENVIRONMENT, ET AL

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EXHIBIT 6

TO

CONSENT DECREE

Consent Decree Exhibit 6, Effluent Violations, 24-hr Reporting
Back River WWTP - MD0021555
8/31/2020 - 8/31/2023

Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value	Missing 24-hr Report Count or Date Received
08/31/2020	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	105102.	1
09/30/2020	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	108392.	1
10/31/2020	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	142303.	1
10/31/2020	002	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.21	*
12/31/2020	001	Solids, total suspended	MX WK AV	lb/d	16000.	22704.	1
	001	Solids, total suspended	MX WK AV	lb/d	16000.	18278.	1
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	298.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	712.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	481.	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4	1
01/31/2021	001	Solids, total suspended	MX WK AV	lb/d	16000.	17426.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	16.	1
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	241.	1
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4	*
	002	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.23	*
02/28/2021	001	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	11000.	26044.	1
	001	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	10.	20.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	18077.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	25746.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	50488.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	19.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	17.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	35.	1
	001	Solids, total suspended	MX MO AV	lb/d	11000.	54768.	1
	001	Solids, total suspended	MX MO AV	mg/L	10.	40.	1
	001	Solids, total suspended	MX WK AV	lb/d	16000.	31571.	1
	001	Solids, total suspended	MX WK AV	lb/d	16000.	70938.	1
	001	Solids, total suspended	MX WK AV	lb/d	16000.	102949.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	29.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	47.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	70.	1
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	773.	1
	001	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.6	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	369.	1

Consent Decree Exhibit 6, Effluent Violations, 24-hr Reporting
Back River WWTP - MD0021555
8/31/2020 - 8/31/2023

Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value	Missing 24-hr Report Count or Date Received
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	524.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	530.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	1668.	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.5	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.1	1
	002	Solids, total suspended	MX WK AV	mg/L	45.	52.	1
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.9	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.6	*
	002	Phosphorus, total [as P]	MO AVG	mg/L	.2	.8	*
03/31/2021	001	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	11000.	25757.	1
	001	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	10.	21.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	16725.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	19321.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	49153.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	36.	1
	001	Solids, total suspended	MX MO AV	lb/d	11000.	53975.	1
	001	Solids, total suspended	MX MO AV	mg/L	10.	43.	1
	001	Solids, total suspended	MX WK AV	lb/d	16000.	35020.	1
	001	Solids, total suspended	MX WK AV	lb/d	16000.	38616.	1
	001	Solids, total suspended	MX WK AV	lb/d	16000.	118355.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	33.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	26.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	89.	1
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	940.	1
	001	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.8	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	368.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	598.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	878.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	1920.	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.6	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.5	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.5	1
	001	Toxicity, Chronic	MAXIMUM	tox chronic	1.02	1.2	1

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	002	Solids, total suspended	MX MO AV	mg/L	30.	36.	1
	002	Solids, total suspended	MX WK AV	mg/L	45.	64.	1
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.6	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4	*
	002	Phosphorus, total [as P]	MO AVG	lb/d	83	118.	*
	002	Phosphorus, total [as P]	MX WK AV	lb/d	125	245.	*
	002	Phosphorus, total [as P]	MO AVG	mg/L	.2	.7	*
04/30/2021	001	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	11000.	22155.	1
	001	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	10.	22.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	21833.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	26343.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	29777.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15	28.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15	19.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	28.	1
	001	Solids, total suspended	MX MO AV	lb/d	11000.	41100.	1
	001	Solids, total suspended	MX MO AV	mg/L	10.	41.	1
	001	Solids, total suspended	MX WK AV	lb/d	16000.	48626.	1
	001	Solids, total suspended	MX WK AV	lb/d	16000.	38258.	1
	001	Solids, total suspended	MX WK AV	lb/d	16000.	25652.	1
	001	Solids, total suspended	MX WK AV	lb/d	16000.	60228.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	37.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	28.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	43.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	64.	1
	001	Solids, total suspended	CUM TOTL	lb/yr	3959228.	4759979.	1
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	964.	1
	001	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.9	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	1065.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	922.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	548.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	1355.	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.9	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.9	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.6	1

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Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value	Missing 24-hr Report Count or Date Received
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.4	1
	001	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277.	83088.	1
	001	E. coli	MX MO GMN	MPN/100mL	126.	152.	1
	002	E. coli	MX MO GMN	MPN/100mL	126.	341.	1
	002	Phosphorus, total [as P]	MO AVG	lb/d	83	118.	*
	002	Phosphorus, total [as P]	MX WK AV	lb/d	125	129.	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.7	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.9	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.8	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.8	*
	002	Phosphorus, total [as P]	MO AVG	mg/L	.2	.8	*
05/31/2021	001	Solids, total suspended	MX MO AV	lb/d	11000.	15867.	1
	001	Solids, total suspended	MX MO AV	mg/L	10.	17.	1
	001	Solids, total suspended	MX WK AV	lb/d	16000.	18600 (only on	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	16.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	21.	1
	001	Solids, total suspended	CUM TOTL	lb/yr	3959228.	5251859.	already counted
	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	168255.	1
	001	Nitrogen, ammonia total [a	MX MO AV	lb/d	2200.	2450.	1
	001	Nitrogen, ammonia total [a	MX MO AV	mg/L	2.	2.7	1
	001	Nitrogen, ammonia total [a	MX WK AV	lb/d	3300.	3658.	1
	001	Nitrogen, ammonia total [a	MX WK AV	mg/L	3.	3.3	1
	001	Nitrogen, ammonia total [a	MX WK AV	mg/L	3.	4.2	1
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	504.	1
	001	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.5	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	336.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	421.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	351.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	423.	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.47	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.39	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.5	1
	001	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277.	97797.	already counted
	001	Phosphorus, total [as P]	MO TOTAL	lb/mo	6652.	14709.	1

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Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value	Missing 24-hr Report Count or Date Received
	002	Nitrogen, ammonia total [as	MX MO AV	mg/L	2.	3.2	1
	002	Nitrogen, ammonia total [as	MX WK AV	mg/L	3.	4.1	1
	002	Nitrogen, ammonia total [as	MX WK AV	mg/L	3.	4.4	1
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.6	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.5	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.5	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4	*
	002	Phosphorus, total [as P]	MO AVG	lb/d	83	87.	*
	002	Phosphorus, total [as P]	MO AVG	mg/L	.2	.6	*
06/30/2021	001	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	11000.	13267.	1
	001	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	10.	12.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000.	35654.	1
	001	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15.	25.	1
	001	Solids, total suspended	MX MO AV	lb/d	11000.	27839.	1
	001	Solids, total suspended	MX MO AV	mg/L	10.	21.	1
	001	Solids, total suspended	MX WK AV	lb/d	16000.	95672.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	63.	1
	001	Solids, total suspended	CUM TOTL	lb/yr	3959228.	6087024.	already counted
	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	203420.	1
	001	Nitrogen, ammonia total [as	MX MO AV	lb/d	2200.	3538.	1
	001	Nitrogen, ammonia total [as	MX MO AV	mg/L	2.	3.8	1
	001	Nitrogen, ammonia total [as	MX WK AV	lb/d	3300.	3502.	1
	001	Nitrogen, ammonia total [as	MX WK AV	lb/d	3300.	3379.	1
	001	Nitrogen, ammonia total [as	MX WK AV	lb/d	3300.	3675.	1
	001	Nitrogen, ammonia total [as	MX WK AV	lb/d	3300.	4329.	1
	001	Nitrogen, ammonia total [as	MX WK AV	mg/L	3.	3.1	1
	001	Nitrogen, ammonia total [as	MX WK AV	mg/L	3.	4.2	1
	001	Nitrogen, ammonia total [as	MX WK AV	mg/L	3.	4.2	1
	001	Nitrogen, ammonia total [as	MX WK AV	mg/L	3.	4.7	1
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	674.	1
	001	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.6	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	350.	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	1963.	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.4	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.3	1

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Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value	Missing 24-hr Report Count or Date Received
	001	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277.	112766.	already counted
	001	Phosphorus, total [as P]	MO TOTAL	lb/mo	6652.	15368.	1
	002	Solids, total suspended	MX WK AV	mg/L	45.	51.	1
	002	Nitrogen, ammonia total [as	MX MO AV	mg/L	2.	4.3	1
	002	Nitrogen, ammonia total [as	MX WK AV	mg/L	3.	4.4	1
	002	Nitrogen, ammonia total [as	MX WK AV	mg/L	3.	3.8	1
	002	Nitrogen, ammonia total [as	MX WK AV	mg/L	3.	4.6	1
	002	Nitrogen, ammonia total [as	MX WK AV	mg/L	3.	5.1	1
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.36	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.09	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.53	*
	002	Phosphorus, total [as P]	MX WK AV	lb/d	125	222.	*
	002	Phosphorus, total [as P]	MO AVG	lb/d	83	106.	*
	002	Phosphorus, total [as P]	MO AVG	mg/L	.2	.5	*
07/31/2021	001	Solids, total suspended	MX MO AV	mg/L	10.	11.	1
	001	Solids, total suspended	MX WK AV	mg/L	15.	17.	1
	001	Solids, total suspended	CUM TOTL	lb/yr	3959228.	6364991.	already counted
	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	129076.	1
	001	Phosphorus, total [as P]	MX MO AV	lb/d	220.	298.	1
	001	Phosphorus, total [as P]	MX MO AV	mg/L	.2	.4	1
	001	Phosphorus, total [as P]	MX WK AV	lb/d	330.	491.	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.33	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.31	1
	001	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.6	1
	001	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277.	121931.	already counted
	001	Phosphorus, total [as P]	MO TOTAL	lb/mo	6652.	9165.	1
	002	Solids, total suspended	MX WK AV	mg/L	45.	49.	1
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.45	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	1.14	*
	002	Phosphorus, total [as P]	MX WK AV	mg/L	.3	.37	*
	002	Phosphorus, total [as P]	MX WK AV	lb/d	125	222.	*
	002	Phosphorus, total [as P]	MO AVG	lb/d	83	102.	*
	002	Phosphorus, total [as P]	MO AVG	mg/L	.2	.5	*
08/31/2021	001	Solids, total suspended	CUM TOTL	lb/yr	3959228.	6488815.	already counted
	001	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782.	133628.	1

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	1	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277	126221	already counted
	002	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.51	*
	002	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.25	*
09/30/2021	1	Solids, total suspended	CUM TOTL	lb/yr	3959228	6757377	already counted
	1	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782	147437	1
	1	Nitrogen, total [as N]	CUM TOTL	lb/yr	1582055	1662741	1
	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	0.21	1
	1	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277	142071	already counted
	2	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.42	*
	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.21	*
10/31/2021	1	Solids, total suspended	CUM TOTL	lb/yr	3959228	6915527	already counted
	1	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782	144023	1
	1	Nitrogen, total [as N]	CUM TOTL	lb/yr	1582055	1806764	already counted
	1	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277	147715	already counted
	2	E. coli	MX MO GMN	MPN/100mL	126	138	1
	2	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.32	*
	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.26	*
11/30/2021	1	Nitrogen, total [as N]	CUM TOTL	lb/yr	1582055	1889993	already counted
	1	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277	151244	already counted
	1	Solids, total suspended	CUM TOTL	lb/yr	3959228	7015977	already counted
12/31/2021	1	Nitrogen, total [as N]	CUM TOTL	lb/yr	1582055	2030364	already counted
	1	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277	159884	already counted
	1	Phosphorus, total [as P]	MX MO AV	lb/d	220	279	1
	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	0.37	1
	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	437	1
	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.58	1
	1	Solids, total suspended	CUM TOTL	lb/yr	3959228	7214961	already counted
	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.43	1
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.4	1
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.35	1
	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.57	1
01/31/2022	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	0.64	1

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01/31/2022	1	Phosphorus, total [as P]	MX MO AV	lb/d	220	581	1
01/31/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.72	1
01/31/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.72	Y (2/4/22)
01/31/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.92	Y (2/4/22)
01/31/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	784	Y (2/4/22)
01/31/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	618	1
01/31/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	792	Y (2/4/22)
01/31/2022	1	Solids, total suspended	MX MO AV	mg/L	10	17	1
01/31/2022	1	Solids, total suspended	MX MO AV	lb/d	11000	15490	1
01/31/2022	1	Solids, total suspended	MX WK AV	mg/L	15	33	Y (2/4/22)
01/31/2022	1	Solids, total suspended	MX WK AV	lb/d	16000	27437	Y (2/4/22)
01/31/2022	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.57	1
01/31/2022	2	Phosphorus, total [as P]	MO AVG	lb/d	83	91	1
01/31/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.66	1
01/31/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.5	Y(2/4/22)
01/31/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.91	Y (2/4/22)
01/31/2022	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	145	Y(2/4/22)
02/28/2022	1	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	10	11	Y (3/10/22)
02/28/2022	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	1.07	Y (3/10/22)
02/28/2022	1	Phosphorus, total [as P]	MX MO AV	lb/d	220	1055	Y (3/10/22)
02/28/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	1.55	1
02/28/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	1.08	1
02/28/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.78	Y (3/8/22)
02/28/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.87	Y (3/10/22)
02/28/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	1709	1
02/28/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	920	1
02/28/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	705	Y (3/8/22)
02/28/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	884	Y (3/10/22)
02/28/2022	1	Solids, total suspended	MX MO AV	mg/L	10	19	Y (3/10/22)
02/28/2022	1	Solids, total suspended	MX MO AV	lb/d	11000	19165	Y (3/10/22)
02/28/2022	1	Solids, total suspended	MX WK AV	mg/L	15	30	1
02/28/2022	1	Solids, total suspended	MX WK AV	mg/L	15	18	1
02/28/2022	1	Solids, total suspended	MX WK AV	mg/L	15	18	Y (3/10/22)
02/28/2022	1	Solids, total suspended	MX WK AV	lb/d	16000	32463	1
02/28/2022	1	Solids, total suspended	MX WK AV	lb/d	16000	19063	Y (3/10/22)
02/28/2022	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	1.57	1
02/28/2022	2	Phosphorus, total [as P]	MO AVG	lb/d	83	242	1
02/28/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	2.32	1
02/28/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	1.18	1
02/28/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.74	Y (3/8/22)
02/28/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	1.57	Y (3/10/22)
02/28/2022	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	360	1

Consent Decree Exhibit 6, Effluent Violations, 24-hr Reporting
Back River WWTP - MD0021555
8/31/2020 - 8/31/2023

Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value	Missing 24-hr Report Count or Date Received
02/28/2022	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	180	1
02/28/2022	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	242	Y (3/10/22)
02/28/2022	2	Solids, total suspended	MX MO AV	mg/L	30	32	Y (3/10/22)
03/31/2022	1	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	10	14	1
03/31/2022	1	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	11000	12621	1
03/31/2022	1	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15	22	Y (4/1/22)
03/31/2022	1	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15	17	1
03/31/2022	1	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000	19735	Y (4/1/22)
03/31/2022	1	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277	87627	1
03/31/2022	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	1.45	1
03/31/2022	1	Phosphorus, total [as P]	MX MO AV	lb/d	220	1293	1
03/31/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	1.27	1
03/31/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	2.97	Y (4/1/22)
03/31/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	1.16	1
03/31/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.53	1
03/31/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	1219	1
03/31/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	2705	Y (4/1/22)
03/31/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	961	1
03/31/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	453	1
03/31/2022	1	Solids, total suspended	MX MO AV	mg/L	10	14	1
03/31/2022	1	Solids, total suspended	MX MO AV	lb/d	11000	12122	1
03/31/2022	1	Solids, total suspended	MX WK AV	mg/L	15	19	Y (4/1/22)
03/31/2022	1	Solids, total suspended	MX WK AV	lb/d	16000	16506	Y (4/1/22)
03/31/2022	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	1.42	1
03/31/2022	2	Phosphorus, total [as P]	MO AVG	lb/d	83	215	1
03/31/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	2.56	1
03/31/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	1.21	1
03/31/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.38	1
03/31/2022	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	373	Y (4/1/22)
03/31/2022	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	197	1
04/30/2022	1	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	16000	17833	1
04/30/2022	1	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	15	16	1
04/30/2022	1	pH	MINIMUM	SU	6.5	6.3	1
04/30/2022	1	Phosphorus, total [as P]	MX MO AV	lb/d	220	687	1
04/30/2022	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	0.65	1
04/30/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	1852	1
04/30/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	462	1
04/30/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	1.63	1
04/30/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.47	1
04/30/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.32	1
04/30/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.31	1
04/30/2022	1	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277	108248	already counted

Consent Decree Exhibit 6, Effluent Violations, 24-hr Reporting
Back River WWTP - MD0021555
8/31/2020 - 8/31/2023

Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value	Missing 24-hr Report Count or Date Received
04/30/2022	2	pH	MINIMUM	SU	6.5	6.4	1
04/30/2022	2	Phosphorus, total [as P]	MO AVG	lb/d	83	87	1
04/30/2022	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.56	1
04/30/2022	2	Phosphorus, total [as P]	WKLY AVG	lb/d	125	219	1
04/30/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	1.36	1
04/30/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.41	1
04/30/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.35	1
05/31/2022	1	Nitrogen, total [as N]	MO TOTAL	lb/mo	99782	160625	1
05/31/2022	1	Phosphorus, total [as P]	MX MO AV	lb/d	220	293	1
05/31/2022	1	Phosphorus, total [as P]	MX MO AV	mg/L	0.2	0.28	1
05/31/2022	1	Phosphorus, total [as P]	MX WK AV	lb/d	330	504	1
05/31/2022	1	Phosphorus, total [as P]	MX WK AV	mg/L	0.3	0.4	1
05/31/2022	1	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277	117333	already counted
05/31/2022	1	Phosphorus, total [as P]	MO TOTAL	lb/mo	6652	9085	1
05/31/2022	2	Phosphorus, total [as P]	MO AVG	mg/L	0.2	0.25	1
05/31/2022	2	Phosphorus, total [as P]	WKLY AVG	mg/L	0.3	0.39	1
06/30/2022	1	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277	121426	already counted
07/31/2022	1	Phosphorus, total [as P]	CUM TOTL	lb/yr	79277	124705	already counted

*Did not count missing 24-hr notice for TP violations at Outfall 002. The limits were not included in the DMRs until November 2021.

Total missing 24-hr reports: 246

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EXHIBIT 7

TO

CONSENT DECREE

Consent Decree Exhibit 7, Missing Data
Back River WWTP - MD0021555
1/1/2017 - 8/31/2023

Monitoring Period End Date	Perm Feature ID	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value	Incomplete DMR Count
04/30/2018	001	Chromium, hexavalent tot recoverable	VALUE	mg/L			1
		Toxicity, Acute	MAXIMUM	tox acute	1.		
06/30/2018	001	Polychlorinated biphenyls [PCB] pg/L	QRTR AVG	g/qtr			1
		Polychlorinated biphenyls [PCB] pg/L	QRTR AVG	ng/L			
		Polychlorinated biphenyls [PCB] pg/L	ANNL AVG	ng/L			
		Polychlorinated biphenyls [PCB] pg/L	ANNL MAX	g/yr			
		Toxicity, Acute	MAXIMUM	tox acute	1.		
		Toxicity, Chronic	MAXIMUM	tox chronic	1.02		
	002	Chlorine, total residual	MAXIMUM	mg/L			
		Chromium, hexavalent tot recoverable	MO AVG	ug/L			
09/30/2018	001	Polychlorinated biphenyls [PCB] pg/L	QRTR AVG	g/qtr			1
		Polychlorinated biphenyls [PCB] pg/L	QRTR AVG	ng/L			
		Polychlorinated biphenyls [PCB] pg/L	ANNL AVG	ng/L			
		Polychlorinated biphenyls [PCB] pg/L	ANNL MAX	g/yr			
		Toxicity, Acute	MAXIMUM	tox acute	1.		
		Toxicity, Chronic	MAXIMUM	tox chronic	1.02		
	002	Chlorine, total residual	MAXIMUM	mg/L			
		Chromium, hexavalent tot recoverable	MO AVG	ug/L			
12/31/2018	002	Chromium, hexavalent tot recoverable	MO AVG	ug/L			1
01/31/2019	002	Chlorine, total residual	MAXIMUM	mg/L			1
02/28/2019	002	Chlorine, total residual	MAXIMUM	mg/L			1
03/31/2019	002	Chlorine, total residual	MAXIMUM	mg/L			1
04/30/2019	002	Chlorine, total residual	MAXIMUM	mg/L			1
06/30/2019	002	Chlorine, total residual	MAXIMUM	mg/L			1
07/31/2019	002	Chlorine, total residual	MAXIMUM	mg/L			1
08/31/2019	002	Chlorine, total residual	MAXIMUM	mg/L			1
10/31/2019	002	Chlorine, total residual	MAXIMUM	mg/L			1
11/30/2019	002	Chlorine, total residual	MAXIMUM	mg/L			1
01/31/2020	002	Chlorine, total residual	MAXIMUM	mg/L			1
03/31/2021	001	Polychlorinated biphenyls [PCB] pg/L	QRTR AVG	g/qtr			1
		Polychlorinated biphenyls [PCB] pg/L	QRTR AVG	ng/L			
		Polychlorinated biphenyls [PCB] pg/L	ANNL AVG	ng/L			
		Polychlorinated biphenyls [PCB] pg/L	ANNL MAX	g/yr			

Total:	**15**
Days in Violation:	**450**

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EXHIBIT 8

TO

CONSENT DECREE

Consent Decree Exhibit 8: Back River WWTP PCB Sampling Errors Through August 31, 2023

	Sample Date	Outfall 001	Rinsate Blank	Outfall 002	Rinsate Blank	Method Blank
1	6/30/2018	744	73.9	No Smpl.		NR
2	10/3/2018	590	159	658	136	NR
3	12/12/2018	799	174	770	113	114
4	2/28/2019	397	107	448	118	NR
5	6/13/2019	1,760	994†	1,010	174	NR
6	9/18/2019	1,810	615†	1,500	1,190†	141
7	12/18/2019	1,090	BIT	988	234	111
8	2/27/2020	1,070	222	873	681†	NR
9	6/2/2020	706	818†	555	319	73
10	9/2/2020	1,310	147	1,480	174	NR
11	12/2/2020	909	1,920†	753	1,190†	NR
12	3Q 2022 (exact date unknown)	NR	No Smpl.	NR	No Smpl.	NR

Violations	**12**
Days of Violations	**1,080**

* All measurements in pg/L
† Exceeds 600 pg/L concentration limit
No Smpl.: No Sample Collected
NR: Not Reported
BIT: Sample Broken in Transit

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EXHIBIT 9

TO

CONSENT DECREE

Consent Decree Exhibit 9

Dates of Unauthorized Discharges at Back River WWTP Through August 31, 2023	Volume (gal)
5/3/2018	400-500
6/12/2018	1,000-3,000
7/5/2018	300
2/7/2019	600
1/10/2020	500
8/4/2020	35,000
10/27/2020	5,000
3/24/2021	2,000
7/15/2021	5,500
8/25/2021	3,000
9/6/2021	600
11/5/2021	unknown
11/15/2021	200
12/8/2021	1,000
12/16/2021	1,000
12/27/2021	80
2/18/2022	5,000
3/18/2022	5,000
3/26/2022	200
4/6/2022	50
4/20/2022	200
6/5/2022	10
6/24/2022	25,000
8/23/2022	300
10/27/2022	300
11/29/2022	400
12/20/2022	100
12/25/2022	3,000
12/26/2022	4,000
1/13/2023	5,600
2/4/2023	500
3/18/2023	300
3/25/2023	300
4/6/2023	100
5/1/2023	500
5/21/2023	5,000
5/22/2023	500
5/26/2023	2,500
5/27/2023	300
5/29/2023	2,000
7/8/2023	50

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EXHIBIT 10

TO

CONSENT DECREE

Consent Decree Exhibit 10, Back River WWTP Sampling/Analysis Violations Through August 31, 2023

Sample Date	Cause
8/3/2023	analyzed using unpreserved container
6/18/2023	high incubator temperature
6/17/2023	high incubator temperature
6/16/2023	high incubator temperature
6/15/2023	high incubator temperature
6/14/2023	high incubator temperature
6/13/2023	high incubator temperature
6/12/2023	high incubator temperature
4/7/2023	holding time exceeded
2/17/2023	holding time exceeded
2/7/2023	holding time exceeded
2/6/2023	holding time exceeded
2/5/2023	holding time exceeded
2/1/2023	holding time exceeded
1/29/2023	sample incubated too long
1/25/2023	holding time exceeded
12/24/2022	holding time exceeded
12/14/2022	holding time exceeded
12/7/2022	holding time exceeded
11/23/2022	holding time exceeded
11/22/2022	holding time exceeded
11/19/2022	holding time exceeded
11/17/2022	holding time exceeded
11/2/2022	holding time exceeded
10/21/2022	holding time exceeded
10/14/2022	holding time exceeded
10/13/2022	holding time exceeded
10/12/2022	holding time exceeded
10/5/2022	holding time exceeded
10/4/2022	holding time exceeded
10/3/2022	holding time exceeded
9/26/2022	improperly preserved sample
9/21/2022	holding time exceeded
9/18/2022	holding time exceeded
9/17/2022	sample incubated too long
9/16/2022	sample incubated too long
9/14/2022	holding time exceeded
8/31/2022	holding time exceeded
8/29/2022	holding time exceeded
8/11/2022	holding time exceeded
8/10/2022	holding time exceeded
8/6/2022	holding time exceeded
8/5/2022	holding time exceeded
8/1/2022	holding time exceeded

7/22/2022	holding time exceeded
7/13/2022	holding time exceeded
7/9/2022	high incubator temperature
7/8/2022	high incubator temperature
7/1/2022	holding time exceeded
6/29/2022	holding time exceeded
6/17/2022	holding time exceeded
6/10/2022	holding time exceeded
6/8/2022	sample not preserved
5/29/2022	improperly preserved sample
5/12/2022	high incubator temperature
5/11/2022	high incubator temperature
5/10/2022	high incubator temperature
5/8/2022	high incubator temperature
4/29/2022	holding time exceeded
4/15/2022	holding time exceeded
4/14/2022	holding time exceeded
4/8/2022	holding time exceeded
4/1/2022	holding time exceeded
3/18/2022	holding time exceeded
3/5/2022	holding time exceeded
3/4/2022	holding time exceeded
2/23/2022	holding time exceeded
2/21/2022	holding time exceeded
2/18/2022	holding time exceeded
2/8/2022	holding time exceeded
2/7/2022	holding time exceeded
2/4/2022	unspecified laboratory error
1/31/2022	holding time exceeded
1/24/2022	holding time exceeded
1/7/2022	holding time exceeded

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EXHIBIT 11

TO

CONSENT DECREE

Consent Decree Exhibit 11: Patapsco WWTP Effluent Violations
1/31/2020 - 8/31/2023

Monitoring Period End Date	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value
01/31/2020	Enterococci	MO GEOMN	MPN/100mL	35.	47.
07/31/2020	Enterococci	MO GEOMN	MPN/100mL	35.	56.4
08/31/2020	Solids, total suspended	MX WK AV	lb/d	27000.	30500.
	Solids, total suspended	MX WK AV	mg/L	45.	75.
	Enterococci	MO GEOMN	MPN/100mL	35.	74.
03/31/2021	Enterococci	MO GEOMN	MPN/100mL	35.	53.
04/30/2021	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	18000.	18900.
	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	30.	40.
	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	45.	49.
	Solids, total suspended	MX MO AV	mg/L	30.	32.
	Enterococci	MO GEOMN	MPN/100mL	35.	48.
05/31/2021	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	30.	31.
	Solids, total suspended	MX MO AV	mg/L	30.	31.
	Nitrogen, ammonia total [as N]	MX MO AV	mg/L	6.3	7.6
	Enterococci	MO GEOMN	MPN/100mL	35.	119.
06/30/2021	Solids, total suspended	MX WK AV	lb/d	27000.	31700.
	Solids, total suspended	MX WK AV	mg/L	45.	55.
	Nitrogen, ammonia total [as N]	MX MO AV	mg/L	6.3	7.5
	Enterococci	MO GEOMN	MPN/100mL	35.	41.
07/31/2021	Solids, total suspended	MX MO AV	mg/L	30.	34.
	Nitrogen, ammonia total [as N]	MX MO AV	lb/d	3836.	4140.
	Nitrogen, ammonia total [as N]	MX MO AV	mg/L	6.3	9.7
	Enterococci	MO GEOMN	MPN/100mL	35.	108.
12/31/2021	Oxygen, dissolved [DO]	INST MIN	mg/L	5.	4.8
01/31/2022	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	30	39
01/31/2022	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	45	50
01/31/2022	Enterococci	MO GEOMN	MPN/100mL	35	64
02/28/2022	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	30	33
02/28/2022	Solids, total suspended	MX MO AV	mg/L	30	34
04/30/2022	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	18000	18800
04/30/2022	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	30	38
04/30/2022	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	27000	30100
04/30/2022	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	45	60
04/30/2022	Solids, total suspended	MX MO AV	lb/d	18000	29200
04/30/2022	Solids, total suspended	MX MO AV	mg/L	30	61
04/30/2022	Solids, total suspended	MX WK AV	lb/d	27000	74500
04/30/2022	Solids, total suspended	MX WK AV	mg/L	45	155
04/30/2022	Enterococci	MO GEOMN	MPN/100mL	35	57
05/31/2022	Nitrogen, ammonia total [as N]	MX MO AV	lb/d	3836	7140
05/31/2022	Nitrogen, ammonia total [as N]	MX MO AV	mg/L	6.3	14.2
05/31/2022	Enterococci	MO GEOMN	MPN/100mL	35	38.2
06/30/2022	Nitrogen, ammonia total [as N]	MX MO AV	lb/d	3836	5910
06/30/2022	Nitrogen, ammonia total [as N]	MX MO AV	mg/L	6.3	13.5

Consent Decree Exhibit 11: Patapsco WWTP Effluent Violations
1/31/2020 - 8/31/2023

Monitoring Period End Date	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value
07/31/2022	Nitrogen, ammonia total [as N]	MX MO AV	lb/d	3836	4270
07/31/2022	Nitrogen, ammonia total [as N]	MX MO AV	mg/L	6.3	10.3
08/31/2022	Nitrogen, ammonia total [as N]	MX MO AV	mg/L	6.3	7.5

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EXHIBIT 12

TO

CONSENT DECREE

Annual Totals Worksheet v11.6

Consent Decree Exhibit 12, Patapsco WWTP				MD0020601			2020
Month	Flow	Nitrogen			Phosphorous		
	Mo. Totals (MG)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)
January	1628.7	7.9	107308.53	107308.53	1.2	16300.03	16300.03
February	1542.3	6.9	88753.20	196061.72	0.7	9003.95	25303.98
March	1533.6	11.5	147087.58	343149.30	1.1	14069.25	39373.22
April	1698.7	8.4	119004.13	462153.43	0.8	11333.73	50706.95
May	1699.8	6.1	86475.63	548629.05	0.6	8505.80	59212.75
June	1512.5	6.2	78208.35	626837.40	0.7	8829.98	68042.72
July	1480.5	4.9	60502.11	687339.52	0.7	8643.16	76685.88
August	1861.4	10.4	161450.39	848789.91	1.6	24838.52	101524.40
September	1176.1	5.3	51985.97	900775.88	0.6	5885.20	107409.61
October	1155.6	4.6	44333.44	945109.32	0.3	2891.31	110300.92
November	1219	3.7	37615.90	982725.22	0.4	4066.58	114367.50
December	1590	3.5	46412.10	1029137.32	0.3	3978.18	118345.68
Annual Totals:	**18098.200**		**1029137.32**			**118345.68**	
Comments:		Interim Limit			Interim Limit		
		Tributary Strategy Limit	889,300		Tributary Strategy Limit	66,700	
		Annual Average Requirement	3.6		Annual Average Requirement	0.27	
		Floating Cap	**543380.36**		**Floating Cap**	**40753.53**	
		Month of Exceedance	May		Month of Exceedance	April	
			30	*(calculated)*		4	*(calculated)*
		Excedence Date in May		*(from MOR)*	Excedence Date in April		*(from MOR)*
		Days Non-Compliant in 2020	216		Days Non-Compliant in 2020	272	
		Loading Exceedance in 2020	485756.96		Loading Exceedance in 2020	77592.16	

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EXHIBIT 13

TO

CONSENT DECREE

Annual Totals Worksheet v11.6

Consent Decree Exhibit 13, Patapsco WWTP				MD0020601			2020	
Month	Flow	Nitrogen			Phosphorous			
	Mo. Totals (MG)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)	
January			0.00	0.00		0.00	0.00	
February			0.00	0.00		0.00	0.00	
March			0.00	0.00		0.00	0.00	
April			0.00	0.00		0.00	0.00	
May	1699.8	6.1	86475.63	86475.63	0.6	8505.80	8505.80	
June	1512.5	6.2	78208.35	164683.98	0.7	8829.98	17335.77	
July	1480.5	4.9	60502.11	225186.09	0.7	8643.16	25978.93	
August	1861.4	10.4	161450.39	386636.48	1.6	24838.52	50817.45	
September	1176.1	5.3	51985.97	438622.45	0.6	5885.20	56702.66	
October	1155.6	4.6	44333.44	482955.89	0.3	2891.31	59593.97	
November			0.00	482955.89		0.00	59593.97	
December			0.00	482955.89		0.00	59593.97	
Annual Totals:	**8885.900**		**482955.89**			**59593.97**		
Comments:		Interim Limit			Interim Limit			
Seasonal limits: Days in violation is date of exceedance through 10/31. For TN, 72 days. For TP, 83 days.		**Tributary Strategy Limit**	**333,330**		**Tributary Strategy Limit**	**33,330**		
		Annual Average Requirement			Annual Average Requirement			
		Floating Cap	n/a		Floating Cap	n/a		
		Month of Exceedance	August		Month of Exceedance	August		
			21	*(calculated)*		10	*(calculated)*	
		Excedence Date in August		*(from MOR)*	Excedence Date in August		*(from MOR)*	
		Days Non-Compliant in 2020			Days Non-Compliant in 2020			
		Loading Exceedance in 2020	149625.89		Loading Exceedance in 2020	26263.97		

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EXHIBIT 14

TO

CONSENT DECREE

Annual Totals Worksheet v11.6

Consent Decree Exhibit 14, Patapsco WWTP				MD0020601			2021
Month	Flow	Nitrogen			Phosphorous		
	Mo. Totals (MG)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)
January	1260.8	5	52575.36	52575.36	0.2	2103.01	2103.01
February	1311.2	19.6	214334.00	266909.36	0.5	5467.70	7570.72
March	1662.4	19.9	275901.88	542811.24	0.7	9705.09	17275.81
April	1718.9	16.9	242272.08	785083.31	1.6	22937.00	40212.81
May	1558.1	13.2	171528.11	956611.43	2.2	28588.02	68800.83
June	1686.9	10.8	151942.46	1108553.88	2	28137.49	96938.32
July	1585	14.6	192995.94	1301549.82	2.8	37012.92	133951.24
August	1550.1	7.1	91787.62	1393337.45	2.1	27148.45	161099.69
September	1582.4	9.1	120094.67	1513432.11	1.6	21115.55	182215.24
October	1577.6	10.2	134203.28	1647635.39	1.5	19735.78	201951.02
November	1465.2	16.6	202848.15	1850483.54	1.7	20773.61	222724.62
December	1382	12.4	142920.91	1993404.45	2.5	28814.70	251539.32
Annual Totals:	**18340.600**		**1993404.45**			**251539.32**	
Comments:		Interim Limit			Interim Limit		
		Tributary Strategy Limit	889,300		Tributary Strategy Limit	66,700	
		Annual Average Requirement	3.6		Annual Average Requirement	0.27	
		Floating Cap	**550658.17**		**Floating Cap**	**41299.36**	
		Month of Exceedance	April		Month of Exceedance	May	
		Excedence Date in April	1	*(calculated)*	Excedence Date in May	2	*(calculated)*
				(from MOR)			*(from MOR)*
		Days Non-Compliant in 2021	275		Days Non-Compliant in 2021	244	
		Loading Exceedance in 2021	1442746.27		Loading Exceedance in 2021	210239.96	
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EXHIBIT 15

TO

CONSENT DECREE

Annual Totals Worksheet v11.6

Consent Decree Exhibit 15, Patapsco WWTP				MD0020601			2021
Month	Flow	Nitrogen			Phosphorous		
	Mo. Totals (MG)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)
January			0.00	0.00		0.00	0.00
February			0.00	0.00		0.00	0.00
March			0.00	0.00		0.00	0.00
April			0.00	0.00		0.00	0.00
May	1558.1	13.2	171528.11	171528.11	2.2	28588.02	28588.02
June	1686.9	10.8	151942.46	323470.57	2	28137.49	56725.51
July	1585	14.6	192995.94	516466.51	2.8	37012.92	93738.43
August	1550.1	7.1	91787.62	608254.13	2.1	27148.45	120886.88
September	1582.4	9.1	120094.67	728348.80	1.6	21115.55	142002.43
October	1577.6	10.2	134203.28	862552.07	1.5	19735.78	161738.20
November			0.00	862552.07		0.00	161738.20
December			0.00	862552.07		0.00	161738.20
Annual Totals:	**9540.100**		**862552.07**			**161738.20**	

Comments:							
Seasonal limits: Days in violation is date of exceedance through 10/31. For TN, 122 days. For TP, 148 days.	Interim Limit			Interim Limit			
	Tributary Strategy Limit	**333,330**		**Tributary Strategy Limit**	**33,330**		
	Annual Average Requirement			Annual Average Requirement			
	Floating Cap	n/a		Floating Cap	n/a		
	Month of Exceedance	July		Month of Exceedance	June		
	Excedence Date in July	2	*(calculated)*	Excedence Date in June	6	*(calculated)*	
			(from MOR)			*(from MOR)*	
	Days Non-Compliant in 2021			Days Non-Compliant in 2021			
	Loading Exceedance in 2021	529222.07		Loading Exceedance in 2021	128408.20		

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EXHIBIT 16

TO

CONSENT DECREE

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Consent Decree Exhibit 16, Patapsco WWTP				MD0020601			2022
Month	Flow	Nitrogen			Phosphorous		
	Mo. Totals (MG)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)
January	1612.8	18.8	252874.14	252874.14	2.4	32281.80	32281.80
February	1401.9	20.9	244359.58	497233.72	2.8	32737.17	65018.97
March	1535.7	22.2	284331.78	781565.50	2.1	26896.25	91915.22
April	1677.3	23.6	330132.90	1111698.40	2.6	36370.57	128285.80
May	1869.6	22.1	344593.45	1456291.85	1.6	24947.94	153233.74
June	1575.1	21.5	282431.18	1738723.03	0.9	11822.70	165056.44
July	1542.1	20.7	266225.06	2004948.09	0.6	7716.67	172773.11
August	1455	13.8	167458.86	2172406.95	0.8	9707.76	182480.87
September	1416.3	6.7	79140.01	2251546.96	0.7	8268.36	190749.23
October	1573.5	4.4	57741.16	2309288.12	0.2	2624.60	193373.83
November	1414.8	6.9	81416.08	2390704.20	0.2	2359.89	195733.71
December	1787.1	5	74522.07	2465226.27	0.2	2980.88	198714.59
Annual Totals:	**18861.200**		**2465226.27**			**198714.59**	
Comments:		Interim Limit			Interim Limit		
		Tributary Strategy Limit	889,300		Tributary Strategy Limit	66,700	
		Annual Average Requirement	3.6		Annual Average Requirement	0.27	
		Floating Cap	**566288.67**		**Floating Cap**	**42471.65**	
		Month of Exceedance	March		Month of Exceedance	February	
			8	*(calculated)*		9	*(calculated)*
		Excedence Date in March		*(from MOR)*	Excedence Date in February		*(from MOR)*
		Days Non-Compliant in 2022	299		Days Non-Compliant in 2022	326	
		Loading Exceedance in 2022	1898937.60		Loading Exceedance in 2022	156242.94	

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EXHIBIT 17

TO

CONSENT DECREE

Annual Totals Worksheet v11.6

Consent Decree Exhibit 17, Patapsco WWTP				MD0020601	2022		
Month	Flow	Nitrogen			Phosphorous		
	Mo. Totals (MG)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)	Mo. Avg. Conc. (mg/L)	Mo. Load (lbs/month)	Cum. Load (lbs/year)
January			0.00	0.00		0.00	0.00
February			0.00	0.00		0.00	0.00
March			0.00	0.00		0.00	0.00
April			0.00	0.00		0.00	0.00
May	1869.6	22.1	344593.45	344593.45	1.6	24947.94	24947.94
June	1575.1	21.5	282431.18	627024.64	0.9	11822.70	36770.64
July	1542.1	20.7	266225.06	893249.70	0.6	7716.67	44487.31
August	1455	13.8	167458.86	1060708.56	0.8	9707.76	54195.07
September	1416.3	6.7	79140.01	1139848.57	0.7	8268.36	62463.43
October	1573.5	4.4	57741.16	1197589.72	0.2	2624.60	65088.03
November			0.00	1197589.72		0.00	65088.03
December			0.00	1197589.72		0.00	65088.03
Annual Totals:	**9431.600**		**1197589.72**			**65088.03**	
Comments:		Interim Limit			Interim Limit		
Seasonal limits: Days in violation is date of exceedance through 10/31. For TN, 155 days. For TP, 132 days.		**Tributary Strategy Limit**	**333,330**		**Tributary Strategy Limit**	**33,330**	
		Annual Average Requirement			Annual Average Requirement		
		Floating Cap	n/a		Floating Cap	n/a	
		Month of Exceedance	May		Month of Exceedance	June	
		Excedence Date in May	30	*(calculated)*	Excedence Date in June	22	*(calculated)*
				(from MOR)			*(from MOR)*
		Days Non-Compliant in 2022			Days Non-Compliant in 2022		
		Loading Exceedance in 2022	864259.72		Loading Exceedance in 2022	31758.03	

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EXHIBIT 18

TO

CONSENT DECREE

Consent Decree Exhibit 18, Missing Data
Patapsco WWTP - MD0021601
1/1/2017 - 8/31/2023

Monitoring Period End Date	Parameter Desc	Statistical Base Short Desc	Limit Unit Short Desc	Limit Value	DMR Value	Incomplete DMR Count
6/30/2017	Cyanide, free [amen. to chlorination]	MO AVG	ppb			1
	Cyanide, free [amen. to chlorination]	MO LOAD	lb/d			
2/28/2019	Cyanide, free [amen. to chlorination]	MO AVG	ppb			1
	Cyanide, free [amen. to chlorination]	MO LOAD	lb/d			
3/31/2019	Solids, total suspended	MX MO AV	lb/d	18000		1
	Solids, total suspended	MX MO AV	mg/L	30		
	Solids, total suspended	MX WK AV	lb/d	27000		
	Solids, total suspended	MX WK AV	mg/L	45		
	Cyanide, free [amen. to chlorination]	MO AVG	ppb			
	Cyanide, free [amen. to chlorination]	MO LOAD	lb/d			
4/30/2019	Phosphate, ortho [as P]	MO AVG	lb/d			1
	Phosphate, ortho [as P]	MO AVG	mg/L			
6/30/2019	Oxygen, dissolved [DO]	INST MIN	mg/L	5		1
	pH	MAXIMUM	SU	8.5		
	pH	MINIMUM	SU	6		
	Phosphate, ortho [as P]	MO AVG	lb/d			
	Phosphate, ortho [as P]	MO AVG	mg/L			
	Heptachlor epoxide	QRTR AVG	mg/L			
	Chlorine, total residual	MAXIMUM	mg/L	0.1		

7/31/2019	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	18000	1
	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	30	
	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	27000	
	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	45	
9/30/2019	Solids, total suspended	MX MO AV	lb/d	18000	1
	Solids, total suspended	MX MO AV	mg/L	30	
	Solids, total suspended	MX WK AV	lb/d	27000	
	Solids, total suspended	MX WK AV	mg/L	45	
	Cyanide, free [amen. to chlorination]	MO AVG	ppb		
	Cyanide, free [amen. to chlorination]	MO LOAD	lb/d		
10/31/2019	Phosphate, ortho [as P]	MO AVG	lb/d		1
	Phosphate, ortho [as P]	MO AVG	mg/L		
11/30/2019	Phosphate, ortho [as P]	MO AVG	lb/d		1
	Phosphate, ortho [as P]	MO AVG	mg/L		
9/30/2020	Cyanide, free [amen. to chlorination]	MO AVG	ppb		1
	Cyanide, free [amen. to chlorination]	MO LOAD	lb/d		
11/30/2020	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	18000	1
	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	30	
	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	27000	
	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	45	
	Solids, total suspended	MX MO AV	lb/d	18000	
	Solids, total suspended	MX MO AV	mg/L	30	

	Solids, total suspended	MX WK AV	lb/d	27000	
	Solids, total suspended	MX WK AV	mg/L	45	
12/31/2020	Solids, total suspended	MX MO AV	lb/d	18000	1
	Solids, total suspended	MX MO AV	mg/L	30	
	Solids, total suspended	MX WK AV	lb/d	27000	
	Solids, total suspended	MX WK AV	mg/L	45	
	Phosphate, ortho [as P]	MO AVG	lb/d		
	Phosphate, ortho [as P]	MO AVG	mg/L		
1/31/2021	Solids, total suspended	MX MO AV	lb/d	18000	1
	Solids, total suspended	MX MO AV	mg/L	30	
	Solids, total suspended	MX WK AV	lb/d	27000	
	Solids, total suspended	MX WK AV	mg/L	45	
2/28/2021	Cyanide, free [amen. to chlorination]	MO AVG	ppb		1
	Cyanide, free [amen. to chlorination]	MO LOAD	lb/d		
	Phosphate, ortho [as P]	MO AVG	lb/d		
	Phosphate, ortho [as P]	MO AVG	mg/L		
3/31/2021	BOD, 5-day, 20 deg. C	MX MO AV	lb/d	18000	1
	BOD, 5-day, 20 deg. C	MX MO AV	mg/L	30	
	BOD, 5-day, 20 deg. C	MX WK AV	lb/d	27000	
	BOD, 5-day, 20 deg. C	MX WK AV	mg/L	45	
	Solids, total suspended	MX MO AV	lb/d	18000	
	Solids, total suspended	MX MO AV	mg/L	30	
	Solids, total suspended	MX WK AV	lb/d	27000	
	Solids, total suspended	MX WK AV	mg/L	45	
4/30/2021	Cyanide, free [amen. to chlorination]	MO AVG	ppb		1

	Cyanide, free [amen. to chlorination]	MO LOAD	lb/d			
	Phosphate, ortho [as P]	MO AVG	lb/d			
	Phosphate, ortho [as P]	MO AVG	mg/L			
5/31/2021	Phosphorus , total [as P]	MX MO AV	lb/d	1220		1
	Phosphorus , total [as P]	MX MO AV	mg/L	2		
	Phosphorus , total [as P]	MX WK AV	lb/d	1830		
	Phosphorus , total [as P]	MX WK AV	mg/L	3		
	Phosphate, ortho [as P]	MO AVG	lb/d			
	Phosphate, ortho [as P]	MO AVG	mg/L			

Total:	**17**
Days in Violation:	**510**

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EXHIBIT 19

TO

CONSENT DECREE

Consent Decree Exhibit 19, Patapsco WWTP
Sampling/Analysis Violations Through August 31, 2023

Sample Date	Cause
7/19/2023	holding time exceeded
6/18/2023	high incubator temperature
6/17/2023	high incubator temperature
6/16/2023	high incubator temperature
6/15/2023	high incubator temperature
6/14/2023	high incubator temperature
6/13/2023	high incubator temperature
6/12/2023	high incubator temperature
4/7/2023	holding time exceeded
2/7/2023	holding time exceeded
2/6/2023	holding time exceeded
2/5/2023	holding time exceeded
1/29/2023	sample overincubated
12/24/2022	holding time exceeded
12/3/2022	holding time exceeded
11/22/2022	holding time exceeded
11/19/2022	holding time exceeded
11/17/2022	holding time exceeded
10/9/2022	sample improperly preserved
10/5/2022	holding time exceeded
9/18/2022	holding time exceeded
	1 sample overincubated, 1 sample lost, OP
9/17/2022	holding time exceeded
9/16/2022	sample overincubated
9/10/2022	holding time exceeded
8/29/2022	holding time exceeded
8/12/2022	holding time exceeded
8/10/2022	holding time exceeded
8/3/2022	sample temperature >6 degrees C
8/1/2022	holding time exceeded
7/31/2022	sample temperature >6 degrees C
7/18/2022	sample temperature >6 degrees C
7/13/2022	high incubator temperature
7/11/2022	holding time exceeded
7/9/2022	high incubator temperature
7/8/2022	high incubator temperature
7/2/2022	sample temperature >6 degrees C
4/3/2022	holding time exceeded
3/4/2022	sample not properly incubated
12/13/2021	too high detection limit
11/30/2021	holding time exceeded
11/8/2021	holding time exceeded
11/7/2021	holding time exceeded
11/6/2021	holding time exceeded

11/4/2021	holding time exceeded
10/30/2021	improperly preserved by lab
10/25/2021	holding time exceeded
9/2/2021	holding time exceeded
8/30/2021	holding time exceeded
5/26/2021	holding time exceeded
5/16/2021	holding time exceeded
5/3/2021	holding time exceeded
4/27/2021	holding time exceeded
4/19/2021	OP sample unfiltered, holding time exceeded
4/5/2021	OP sample unfiltered, holding time exceeded
3/12/2021	TSS and BOD samples discarded
2/23/2021	too high detection limit
2/15/2021	holding time exceeded
1/31/2021	holding time exceeded
1/30/2021	holding time exceeded
1/25/2021	sample unfiltered
12/21/2020	sample lost
12/12/2020	holding time exceeded
12/11/2020	holding time exceeded
11/22/2020	holding time exceeded
9/24/2020	samples lost
9/22/2020	holding time exceeded
11/25/2019	OP result exceeded TP result
10/28/2019	OP result exceeded TP result
9/24/2019	wrong lab method used
9/5/2019	holding time exceeded
7/3/2019	holding time exceeded
6/10/2019	holding time exceeded
4/15/2019	holding time exceeded

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EXHIBIT 20

TO

CONSENT DECREE

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (MOU), is entered into this ____day of _____, 2023, (the "Effective Date") by and between

MAYOR AND CITY COUNCIL OF BALTIMORE
100 N. HOLLIDAY STREET, SUITE 400
BALTIMORE, MARYLAND 21202 (the "City"),

The MARYLAND DEPARTMENT OF THE ENVIRONMENT (the "Department"),

and

The CHESAPEAKE BAY TRUST (the "Trust").

I. RECITALS

WHEREAS, the Department seeks to protect and restore the quality of Maryland's air, water, and land resources, while fostering smart growth, economic development, healthy and safe communities, and quality environmental education for the benefit of the environment, public health, and future generations; and

WHEREAS, the Department's Water and Science Administration is tasked with the protection and restoration of Maryland's waters; and

WHEREAS, the City owns and operates the two largest wastewater treatment plants in the State of Maryland: the Back River Wastewater Treatment Plant, located at 8201 Eastern Avenue, Baltimore, Maryland ("Back River WWTP"), and the Patapsco Wastewater Treatment Plant, located at 3501 Asiatic Avenue, Baltimore, Maryland ("Patapsco WWTP"); and

WHEREAS, on January 21, 2022, the Department filed suit in the Circuit Court for Baltimore City, Case No. 24-C-22-000386, in which the Department alleges that the City's operation of the Back River and Patapsco WWTPs and the alleged unauthorized discharge of pollutants—including nitrogen and phosphorus—undermined the efforts by Maryland and the other states in the Chesapeake Bay watershed to restore clean water in the Chesapeake Bay and the region's streams, creeks, and rivers; and

WHEREAS, the Department and the City have entered into a Consent Decree, dated, *[insert date]* in Case No. 24-C-22-000386 ("Consent Decree"), which resolves the alleged violations that occurred at Back River WWTP and Patapsco WWTP, and in which the City agreed to satisfy a portion of its civil penalty liability through the completion of the Patapsco and Back

River Watershed Water Quality Improvement and Restoration Supplemental Environment Project ("Patapsco and Back River SEP"); and

WHEREAS, the Department and the City have agreed in the Consent Decree that the Patapsco and Back River SEP shall consist of: (i) a directed contribution totaling $1,900,000 to the Trust for the purpose of funding water quality improvement and restoration projects in the Patapsco and Back River watersheds that have a reasonable nexus to water quality impacts associated with alleged violations of the Back River and Patapsco WWTP Discharge Permits that are the subject of this Consent Decree and (ii) follow-up reporting; and

WHEREAS, the Trust, a nonprofit entity established by the Maryland General Assembly pursuant to the Annotated Code of Maryland, § 8-1901, *et. seq.* of the Natural Resources Article in 1985 to promote public awareness and participation in the restoration and protection of the water quality, aquatic and land resources of the Chesapeake Bay, and other aquatic and land resources of the State, is authorized to contract with other units of government, including the Department and the City; and

WHEREAS, the Trust has developed a grant management process and possesses the technical, financial, and managerial capacity to assist the City and Department with the timely and appropriate commitment and expenditure of Patapsco and Back River SEP funds to expedite the implementation of water quality and environmental restoration projects to fulfill the goals of the Patapsco and Back River SEP; and

WHEREAS, the Trust has grant programs that will target geographic areas of interest to the Department for water quality and habitat improvements while using best practices to increase inclusion of individuals and groups from diverse backgrounds per the Trust's Diversity and Inclusion value in the Trust's strategic plan and guided by the Diversity and Inclusion Committee; and

WHEREAS, the Trust has a governance and oversight structure with formal representation from local government, State natural resource agencies, and the Maryland General Assembly, and utilizes independent technical review committees to review proposals and recommend awards made through its competitive grant programs; and

WHEREAS, the parties desire to enter into this Agreement in order to: (i) document the City's contribution to the Trust under the Consent Decree, which contribution shall be held by the Trust in a dedicated fund; (ii) provide that the Trust will award competitive grants from the dedicated fund, subject to the approval of the Department, to non-profit organizations, community associations, academic institutions, individual homeowners, and state and local governments for the completion of projects in order to carry out the purpose of the Patapsco and Back River SEP; (iii) provide for a reporting requirement by which the Trust shall submit timely reports to the Department and the City on its expenditure of the City's contribution and any balance remaining in the dedicated fund; and (iv) provide that, if any amount of the City's contribution remains

unawarded by the Trust on the seventh anniversary of the effective date of the Consent Decree, that amount shall revert to the Department in accordance with the Consent Decree; and

WHEREAS, the City and Department have chosen the Trust, and the Trust has agreed, to perform the work described herein and to be bound by the terms of this MOU; and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

II. PURPOSE OF THE MOU

The purpose of this MOU is for the Trust to use its existing grant programs, or other similar programs, to expend the City's contribution of $1,900,000.00 (collectively, or any portion thereof, the "Patapsco and Back River SEP Funds") to implement water quality and environmental restoration projects that will improve the water quality and aquatic and land habitats of the Patapsco and Back River watersheds.

III. ROLES AND RESPONSIBILITIES

A. CITY

1. The City shall provide Patapsco and Back River SEP Funds to the Trust in a manner acceptable to the City and the Trust (i.e., check, wire, or ACH) for implementation of water quality and environmental restoration projects.
2. The City shall track when Patapsco and Back River SEP Funds are transferred to the Trust and provide that information to the Department.
3. The City's responsibilities with respect to any water quality and environmental restoration projects selected by the Trust for award under this MOU shall be strictly limited to the transfer of Patapsco and Back River SEP Funds to the Trust. The City shall not be responsible under this MOU for the administration of any Trust grant award or contracts arising from such grants, nor shall the City be responsible for the design, construction, implementation, oversight, inspection, maintenance, or the successful completion of any water quality and environmental restoration projects selected by the Trust and funded by Patapsco and Back River SEP Funds under this MOU. Following transfer of Patapsco and Back River SEP Funds to the Trust, the City shall have no responsibilities, financial or otherwise, as to any projects funded under this MOU.

B. DEPARTMENT

1. In accordance with the process contained in Appendix A to this MOU, the Department agrees to accept the City's payment of the Patapsco and Back River SEP Funds to the Trust for water quality and environmental restoration projects to satisfy the City's obligation to complete the Patapsco and Back River SEP.

2. The Department may participate on the Trust's Technical Review Committee and submit approval for project selection, if applicable, as outlined in Appendix A.
3. The Department and the City shall receive from the Trust an annual report of the projects funded under this MOU as outlined in Appendix A. The Department will review these annual reports to ensure that the Trust is awarding Patapsco and Back River SEP Funds in a timely manner and consistent with the purposes of this MOU. If the Department determines that the Trust's awarding of Patapsco and Back River SEP Funds is inconsistent with this MOU, it shall notify the Trust in writing within 30 days (with a copy to the City) and request a meeting to resolve the conflict.

C. CHESAPEAKE BAY TRUST

1. The Trust shall track Patapsco and Back River SEP Funds received from the City and the Trust shall place the Patapsco and Back River SEP Funds in an account to be used solely for administering and awarding funding to Grantees.
2. The Trust shall use Patapsco and Back River SEP Funds in a timely manner but will give consideration to identifying quality projects that are most likely to succeed.
3. The Trust shall be solely responsible for administration of any grants or contracts for the water quality and environmental restoration projects funded in whole or in part by Patapsco and Back River SEP Funds provided by the City under this MOU, including, but not limited to, all labor, equipment, outreach, and resources necessary for the design, construction, implementation, oversight, maintenance, and successful completion of such project.
4. The Trust shall use the Community Engagement and Restoration mini-grant program, the Outreach and Restoration grant program, or similar programs as approved by all the Key Personnel listed in Section VI of this MOU to solicit and fund environmental restoration projects, as outlined in Appendix A.
5. The Trust shall invite the Department to participate in any applicable Technical Review Committee and shall notify it of project approval, as outlined in Appendix A.
6. The Trust shall submit to the Department and the City an annual report of the projects funded under this MOU as outlined in Appendix A.
7. The Trust shall retain and maintain all records and documents relating to this MOU for three (3) years after completion of any Trust project funded by Patapsco and Back River SEP Funds or for a longer period if required by applicable law. Records and documents relating to this MOU shall include, but not be limited to, all documentation prepared by or for the Grantees.
8. The Trust shall make available for inspection all records and documents relating to this MOU upon request of the Department or the City, however the City will not be provided records and documents related to the development of specific RFPs or applicants' responses thereto. All records and documents relating to this MOU are subject to audit by the Department or an authorized representative of the Department. The Trust shall promptly grant access to its facilities to authorized Department representative(s) for review of documents, information and interviews of Trust personnel. The Trust will provide to the Department upon request copies of any invoices, records, timesheets, work logs, contracts,

or any other documents or information needed in order for the Department to comply with State or federal reporting and audit requirements.

9. For its services, the Trust shall be entitled to an administrative fee. The Trust's administrative fee will be paid out of the Patapsco and Back River SEP Funds provided by the City, and may not exceed 10% of the total Patapsco and Back River SEP Funds. The Trust will provide advance notice to the Department and the City of its administrative fee.

IV. TERM AND RENEWAL

The MOU shall become effective on the Effective Date as set forth above and shall remain in full force and effect for a period of seven years, unless otherwise terminated in accordance with this MOU.

The term of this MOU may be extended by written agreement of all the Parties.

V. TERMINATION

The Department or the Trust may terminate this MOU with written notice given ninety (90) days in advance to all other Parties. Any unencumbered Patapsco and Back River SEP Funds will be returned to the Department within sixty days (60) of the termination date.

VI. KEY PERSONNEL

The Parties agree that the following named individuals shall have authority to act under this MOU for their respective Parties:

City:

Richard J. Luna
Interim Director
Department of Public Works
200 N. Holiday Street, 6th Floor
Baltimore, MD 21202
(410)396-3310
Richard.Luna@baltimorecity.gov

Department:

Lee Currey
Director
Water & Science Administration
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21231

Trust: Sadie Drescher
Vice President, Programs for Restoration
(410) 974-2941 x105
sdrescher@cbtrust.org

Should these individuals become unavailable during the period of performance, personnel of equivalent capability shall be assigned to complete the work under this MOU.

VII. FUNDING

A. The City shall provide the Trust with funds not to exceed $1,900,000.00 for tasks performed in accordance with this Agreement.

B. The City shall provide the Trust with such funds in three equal installments on November 30, 2023, July 31, 2024, and July 31, 2025.

C. The Trust shall submit invoices to the City on November 16, 2023, May 31, 2024, and May 31, 2025 for the installments due on November 30, 2023, July 31, 2024, and July 31, 2025, respectively at the following address:

Richard J. Luna
Interim Director
Department of Public Works
200 N. Holiday Street, 6th Floor
Baltimore, MD 21202
(410)396-3310
Richard.Luna@baltimorecity.gov

D. Such funds shall be used solely and exclusively for tasks performed and materials required in accordance with this Agreement and the Scope of Work.

E. If any funds remain unawarded under the terms of this Agreement at the termination of this Agreement, such funds shall revert to the Department in satisfaction of the City's obligation to a portion of the civil penalty under the Consent Decree.

VIII. GENERAL PROVISIONS

A. NON-EXCLUSIVITY. The Trust shall retain the right to accept funding from other sources for the water quality and environmental restoration projects.

B. INDEMNIFICATION. Recognizing that the Trust is subject to limitations on the indemnity that it can legally provide, the Trust agrees, to the extent permitted by the Maryland Tort Claims Act, Maryland Code, State Government Article, Section 12-101 *et. seq.*, subject to the availability of appropriations, and the fullest extent permitted by law, to indemnify, defend, and

hold harmless the Department and the City, their officers, directors, agents and employees from all suits, actions, or claims of any character, brought on account of any injuries or damage sustained by any person or property in consequence of any work performed under this MOU, either by the Trust or any subcontractor, or their employees, agents, or representatives. This is not deemed as a waiver of any immunity which may exist in any action. The Department and the City do not waive any right or defense, or forebear any action, in connection herewith.

C. RESOLUTION OF DISAGREEMENTS. Should disagreements as to the implementation or interpretation of the provisions of this MOU, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement will be stated in writing by each Party and presented to the other Parties for consideration. If agreement on interpretation is not reached within thirty (30) days, the Parties shall forward the written presentation of the disagreement to a higher official in each agency for appropriate resolution.

D. NO THIRD-PARTY BENEFICIARIES. Nothing in this MOU shall be construed to: (1) provide a benefit to any third-party; (2) operate in any way as a promise, covenant, warranty, or other assurance to any third-party; or (3) create any obligation to any third party.

E. AMENDMENTS TO MOU. This MOU may not be amended or modified except with the written agreement of all the Parties.

F. AMENDMENTS TO APPENDIX A. The Parties acknowledge and agree that Appendix A is the result of a joint effort by the Parties. Because Appendix A is intended to be a working document that may evolve over time, the Parties agree that Appendix A may be amended periodically, but not more frequently than once every six months, with the written agreement of all the Key Personnel listed in Section VI of this MOU.

G. MARYLAND LAW PREVAILS. This MOU shall be governed by and construed under the laws of the State of Maryland.

H. AUTHORITY. Each Party to this MOU acknowledges and agrees that it has the full right, power, and authority to execute this MOU, and to perform the obligations hereunder.

I. MERGER. This MOU, all appendices and approved modifications hereto (hereinafter referred to collectively as "MOU Documents"), embody the entire MOU of the Parties. There are no promises, terms, conditions, or obligations referring to the subject matter, other than those contained herein or incorporated herein by reference.

J. ELECTRONIC SIGNATURES. Signatures provided by electronic means including, by way of example and not of limitation, facsimile, Adobe, PDF, and sent by electronic mail or by an electronic signature program, shall be deemed to be original signatures.

IN WITNESS WHEREOF, the Parties have executed this MOU by causing the same to be

signed by their duly authorized representatives on the day and year first above written.

WITNESS

MARYLAND DEPARTMENT OF THE ENVIRONMENT

_____

By: _____
Lee Currey
Director
Water & Science Administration

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

_____
Jonathan E.C. May
Assistant Attorney General for the Maryland Department of the Environment

WITNESS

MAYOR AND CITY COUNCIL OF BALTIMORE, MARYLAND

_____

By: _____
Richard J. Luna
Interim Director
Department of Public Works

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

_____
Darnell E. Ingram
General Counsel

WITNESS

CHESAPEAKE BAY TRUST

_____

By: _____
Jana Davis, President

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APPENDIX A
SCOPE OF WORK

I. Project Goal

The purpose of this MOU is for the Trust to expend the City's contribution of the Patapsco and Back River SEP funds ("Patapsco and Back River SEP Funds") to implement water quality and environmental restoration projects that will improve the water quality and aquatic and land habitats of the Patapsco and Back River watersheds.

Expenditure of Patapsco and Back River SEP Funds will provide communities affected by the operation of, and the unauthorized discharge of pollutants from, the Back River Wastewater Treatment Plant ("Back River WWTP") and the Patapsco Wastewater Treatment Plant ("Patapsco WWTP") with water quality improvement and restoration projects in the Patapsco and Back River watersheds that have a reasonable nexus to water quality impacts associated with alleged violations of the Back River and Patapsco WWTP discharge permits. Through the Patapsco and Back River SEP, the Trust awards competitive grants to non-profit organizations, community associations, academic institutions, and state and local governments for projects designed to improve water quality or restore aquatic habitat in the Patapsco and Back River watersheds ("Patapsco and Back River Water Quality Projects").

The objectives of the Patapsco and Back River SEP are to: (1) Improve water quality and/or ecological function in the Patapsco estuary and/or upstream waters; (2) Improve water quality and/or ecological function in the Back River and/or upstream waters; (3) Reduce impacts from pollution in these waterways; (4) Improve public education/transparency about water quality; and (5) Provide mitigation or remediation benefits for harms to water quality and the aquatic environment.

II. Scope of Work

The Trust shall administer the Patapsco and Back River SEP Funds received from the City to Grantees during each Grant Cycle in accordance with the Trust's standard operating procedures and pro-forma award agreement.

The Trust shall evaluate grant requests with priority given to Environmental Justice, which includes that:

i. Priority shall be given to projects that provide tangible benefits to areas or populations that currently bear a disproportionate percentage of pollution burdens.
ii. The Trust shall either use the overburdened/underserved definition and map, or use a threshold in the Maryland EJScreen tool (e.g., top quartile or quintile of index).

iii. The Trust shall either create a project scoring rubric that gives a maximum number of points for being in one of the "environmental justice" areas (see above), or establish a sub-account dedicated for projects in these areas and require a minimum amount of the SEP award be provided to that account (e.g., 40% would dovetail with the Justice 40 principle).

Eligible project types include, but are not limited to, upland, aquatic, and wetlands restoration and protection projects or best management practices. The Trust shall evaluate proposals with consideration given to, among others:

Evaluation criteria (nonexclusive list of factors to consider in evaluating proposals include the following):

A. Remediation/mitigation for impacts associated with the City's wastewater treatment plants
B. Reduction of nutrient / sediment pollution
C. Reduction of toxins, metals, and trash
D. Reduction of human health impacts associated with exposure to pollution
E. Reduction of cumulative impact
F. Community involvement (e.g., number of volunteers engaged in installation of project or users of the feature)
G. Education about water quality
H. Climate co-benefits (e.g., mitigates flood risk, urban heat, etc.)
I. Leverage (i.e., proposals evaluated based on total reduction, not just reduction funded by the award in order to drive public or private cost-share funding)
J. Cost-effectiveness (not limited to nutrients, but on $/LB of any pollutant)
K. Innovation (stimulates and catalyzes adoption of a new technology)

Nonconflicted parties to this MOU will agree on the final list of review criteria that will be published with the RFPs.

Eligible projects shall be targeted to the Patapsco and Back River watersheds as follows. The Trust shall ensure that funds are awarded for projects in both the Patapsco and Back River watersheds, and shall endeavor to allocate at least $300,000 in awards for projects in the Patapsco River watershed and $600,000 in awards for projects in the Back River watershed.

Eligible project applications shall include 1) property owner approval and 2) long-term (~2-5 years) maintenance and protection of the site, if applicable.

III. Services

To fulfill its obligations under this Agreement, the Trust shall provide the following services:

1. Public Participation

The Trust will use best management practices in participatory grant-making, including for example pre-RFP listening sessions, post-RFP release applicant workshops, and select community members involved in the Technical Review Committee.

2. Request for Proposals (RFP) stage

The Trust will work with Department staff to develop or modify one or more RFP(s) to be used to solicit project proposals. RFP development/modification includes articulation of grant program criteria used to evaluate each proposal, including maximum award amount, project type, type of applicant, capacity of applicant to lead a project.

3. Outreach and Technical Assistance

The Trust will work with Department staff on outreach, technical assistance, project solicitation, project selection, implementation schedule, and monitoring protocols for the Grant Program. The Trust will offer site visits and/or technical meetings to potential applicants, assist in the identification of engineers or contractors, and in appropriate cases, provide sample conceptual designs to potential grantees. The Trust may organize, with the Department's participation, workshops to answer any questions and assist in proposal development. The Trust will use its existing system of online grant applications to electronically receive proposals.

4. Review Stage

All awards in the Grant Program(s) will be made through a competitive process developed by the Trust and reviewed and approved by the Department. The Trust will establish one or more Technical Review Committees (Committees), in cooperation with the Department, composed of funding partners, Trust staff and board members, and technical experts, and the Department's Program Manager authorized to allocate funding to awards on behalf of the Department.

The Committee will evaluate each project based on information in the proposal, as well as information from site visits undertaken by members of the Trust and/or the Department. A ranking process developed by the Trust, and reviewed and approved by the Department, and interviews with applicants will be used by the Committee to evaluate proposals and make the best determinations for grant awards. The Trust's Board of Trustees has fiduciary oversight responsibility.

In addition, the Technical Review Committee will be asked to recommend refinements to the RFP based on new scientific data, experiences from the previous cycle, or other information that has been collected.

5. Award and Project Management Stage

The Trust will meet with all Grantees undertaking restoration projects at key phases of project implementation, including finalization of design, pre-construction meetings, construction oversight site visits at a frequency to be determined on a project-by-project basis depending on the characteristics of the project and the experience and capacity of the grantee, and final construction walkthrough. Projects that require construction permits through the Department will be inspected for permit compliance by the Department. The Trust will manage tasks such as distribution of grant dollars, phasing grant awards, reviewing grant revisions, reviewing status reports, managing budgets, reviewing final grant award reports, and documenting and preparing achievements of impervious area treatment and relevant stormwater management project information. The Trust will require applicants to submit maintenance agreements for all projects on private and/or municipal properties.

6. Reporting

The Trust will require all Grantees to submit progress and final reports including a detailed description of the project and any associated copies of invoices. In addition, the Trust will conduct final site visits for all completed restoration construction projects. As appropriate, the Trust will modify its data collection and reporting forms to include additional information requested by the Department.

7. Final Project Stage

The Trust will provide project data to the Department and the City for each implementation project for the Department's and the City's records. The Trust will not be responsible for project monitoring or maintenance.

For these services, the Trust may charge an administrative fee not to exceed 10% of the program funds.

IV. Tentative Work Schedule

The Trust will administer the Grant Program according to the following tentative work schedule.

GRANT CYCLE (to be repeated each subsequent year of the Agreement)	
October/November	Trust and Department develop/modify Request(s) for Proposals
December	Trust releases Request(s) for Proposals
December to March	Trust provides program outreach until the due date and beyond
January to March	Trust identifies Technical Review Committee members

GRANT CYCLE (to be repeated each subsequent year of the Agreement)	
	with input from the Department
March	Proposals due
April	Technical Review Committee meets to recommend proposals for funding
May	Proposals Approved or Declined
May	Trust submits Award Notification and Project Descriptions letter to Department
June/July	Trust distributes first phase of funding to grantees and projects begin
Ongoing throughout the Agreement period	Trust submits quarterly Interim Progress Reports to Department

V. Progress Report Schedule

The Trust will furnish the Department and the City with an Award Notification and Project Descriptions letter, Interim Progress Reports, and a Final Report indicating progress and performance according to the schedule provided in the table below.

PROGRESS REPORT SCHEDULE	
July 15 of each year	Interim Progress Report
October 15 of each year	Interim Progress Report
January 15 of each year	Interim Progress Report
April 15 of each year	Interim Progress Report
End of the Agreement Period	Final Report