

COUNTY COUNCIL OF CECIL COUNTY, MARYLAND
LEGISLATIVE SESSION DAY 2013-05

RESOLUTION NO. 13-2013

Title of Resolution: Consent Order – Maryland Department of the Environment – North East River
Advanced Wastewater Treatment Plan

Synopsis: A Resolution regarding the Consent Order between the State of Maryland Department of
Environment and Cecil County, Maryland with regard to the Enhanced Nutrient Removal (ENR) upgrade of
the North East River Advanced Wastewater Treatment Plant.

Introduced by: Council President on behalf of the County Executive

Introduced and ordered posted on: March 5, 2013

Scheduled for consideration on: March 19, 2013

Notice and title of Resolution having been posted by March 8, 2013 at the County
Administration Building, 200 Chesapeake Blvd., Elkton and consideration by the Council having been
scheduled on March 19, 2013.

By: James Massey
Council Manager

**COUNTY COUNCIL OF CECIL COUNTY, MARYLAND
RESOLUTION NO. 13-2013**

1 **WHEREAS**, a Consent Order between the State of Maryland, Department of the Environment and
2 Cecil County, Maryland outlines and resolves any actual or potential violations of MDE Discharge Permit
3 Number 09-DP-1082, NPDES Number MD0052027 pertaining to the Permit compliance schedule and/or
4 Permit effluent limits for the North East River Advance Wastewater Treatment Plant located at 123
5 Carpenter’s Point Road, Perryville, Maryland 21903; and

6 **WHEREAS**, the County Council of Cecil County was briefed on the terms of the Consent Order by the
7 Director of the Department of Public Works on March 5, 2013; and

8 **WHEREAS**, the Council received a recommendation from the Cecil County Executive and Director of
9 Public Works to execute the Consent Order to resolve the alleged violations against the County.

10
11 **NOW, THEREFORE, BE IT HEREBY RESOLVED** that the County Council of Cecil County authorizes
12 Robert J. Hodge, President of the County Council of Cecil County to sign the Consent Order between the
13 State of Maryland, Department of the Environment and Cecil County, Maryland to settle the alleged
14 violations as outlined in the agreement (copy of Consent Order attached).

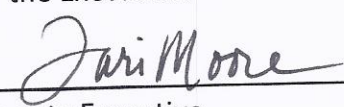
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16 INTRODUCED: March 5, 2013

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18 ADOPTED: MARCH 19, 2013



President of the Council

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21
22 ATTEST:
23 
24 _____
25 Council Manager

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27
28 By the Executive:
29 
30 _____
31 County Executive

 3/21/13
Date

**STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard
Baltimore, Maryland 21230**

v.

**CECIL COUNTY DEPARTMENT OF PUBLIC WORKS
P.O. Box 370
Charlestown, Maryland 21914**

*** SECRETARY OF THE ENVIRONMENT
*
* WATER MANAGEMENT ADMINISTRATION
* 1800 Washington Boulevard
* Baltimore, Maryland 21230
*
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*
*

CO-13-_____

CONSENT AGREEMENT

The State of Maryland, Department of the Environment (the "Department"), pursuant to the powers, duties, and responsibilities vested in and imposed upon the Secretary of the Environment by the provisions of Environment Article, Titles 1 and 9, Subtitles 2 and 3, Annotated Code of Maryland, as delegated to the Director of the Water Management Administration (the "Administration"), has conducted an investigation of the North East River Advanced Wastewater Treatment Plant, located at 123 Carpenter's Point Road, Perryville, Cecil County, Maryland (the "Plant"), owned by the Cecil County Department of Public Works, P.O. Box 370, Charlestown Maryland (the "Owner"), and determined that:

- 1. The discharge of any pollutant into waters of this State is prohibited by Environment Article, Section 9-322, Annotated Code of Maryland, unless such discharge is in compliance with the terms, conditions, and requirements of a discharge permit issued pursuant to Environment Article, Section 9-323, Annotated Code of Maryland, and the regulations promulgated thereunder.

- 2. On October 1, 2010, pursuant to Environment Article, Section 9-323 Annotated Code of Maryland, the Administration issued Discharge Permit Number 09-DP-1082, NPDES Number MD0052027 (the "Permit") to the Cecil County Department of Public Works for

the discharge of pollutants from the North East River Advanced Wastewater Treatment Plant to the North East River, which is Use II water protected for the support of estuarine and aquatic life and water contact recreation without shellfish harvesting. The discharge permit (the "Permit") has an effective date of October 1, 2010 and expiration date of September 30, 2015. A copy of the Permit is attached hereto and incorporated herein as Exhibit A.

3. The Permit contains the following schedule for an upgrade of the wastewater treatment plant to provide Enhanced Nutrient Removal (ENR):
 - a. Start construction by March 1, 2012;
 - b. Complete construction and begin ENR operation by March 31, 2014;
4. The Department has determined that the Owner will be unable to comply with the ENR upgrade schedule in violation of the Permit issued in accordance with Environment Article, Section 9-323, Annotated Code of Maryland.
5. The County states that the delay in meeting the schedule was due to the need to perform a pilot study, at the Department's direction, to determine if the Plant could continue to nitrify and denitrify at design flow and conditions through the winter months.
6. The Department neither agrees nor disagrees with the County's statement in paragraph 5.
7. The County states that: (1) it plans to pre-qualify prospective contractors starting in December 2012 to advertise the project in March 2013, and to issue contract award in August 2013; (2) the construction period is planned for 950 days, with substantial completion in June 2016; (3) the plant will then start a 12 month optimization period and should meet ENR requirements at the end of the optimization period, if not sooner.
8. The Department has stated to the County that the ENR limits for nitrogen and phosphorus must be met starting no later than January 1, 2017 for calendar year 2017 or stipulated penalties will be assessed as set forth in this Consent Agreement.

9. MDE and the Owner have mutually agreed to enter into this Consent Agreement to resolve any actual or potential violations of the Permit compliance schedule and/or Permit effluent limits by payment of civil penalties to the Clean Water Fund as set forth below and by establishing a new enforceable schedule for completion of the ENR upgrade and compliance with ENR effluent limits for nitrogen and phosphorus as follows:
- a. The Consent Agreement will not require an upfront penalty for prospective Permit violations but will establish a schedule of stipulated penalties for future violations that occur during the pendency of the Consent Agreement.
 - b. The Consent Agreement includes interim performance standards for Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), Ammonia, Total Nitrogen (TN) and Total Phosphorus (TP) that are equal to two times the established Permit effluent loadings and concentrations set forth in the Permit. The BOD, TSS and Ammonia interim performance standards will be in effect only during actual construction periods that affect Plant processes. The TN and TP interim performance standards will be in effect beginning on the effective date of the Consent Agreement and continuing until December 31, 2016. All other Permit limits will remain in effect during this time.
 - c. The Consent Agreement does not replace or modify the Permit's compliance schedule or effluent limitations, but establishes the understanding that MDE will not seek penalties for certain Permit effluent limitation violations for which an interim performance standard has been established, provided there has been no exceedance of the interim performance standards, or for the continued failure to meet the original Permit compliance schedule for ENR upgrade, so long as compliance with the new extended compliance schedule milestones set forth in this Consent Agreement are met.
 - d. The Consent Agreement will establish stipulated penalties for all future violations of applicable Permit effluent limitations and/or interim performance standards and the new ENR upgrade schedule contained herein.

THEREFORE, it is this ____ day of _____, 2013, pursuant to Environment Article, Sections 9-322 and 9-335, Annotated Code of Maryland, **AGREED** between the Director of the Water Management Administration and the Cecil County Department of Public Works and **ORDERED** by the Director that the Owner shall:

WORK TO BE PERFORMED

- A. Within 45 days of the effective date of this Consent Agreement, submit to the Administration, for review and approval, a finalized time schedule for the ENR upgrade of the Plant that will enable the Plant to comply with the Permit limits at all times, including the ENR nitrogen and phosphorus limits. The Plan shall ensure compliance with ENR Permit limits effective on January 1, 2017 for calendar year 2017.
- B. Implement and complete the Plant ENR upgrade and comply with the ENR nitrogen and phosphorus limits in the Permit in accordance with the time schedule approved by the Administration above.
- C. Optimize the performance of the Plant operations and maintenance in order to comply with the Permit effluent limitations and with the interim performance standards set forth in paragraph D, during the period in which this Consent Agreement is in effect.

**INTERIM STANDARDS FOR BIOCHEMICAL OXYGEN DEMAND (BOD),
AMMONIA AND TOTAL SUSPENDED SOLIDS (TSS)**

- D. Beginning on the date when construction starts and continuing until the Plant ENR upgrade construction is completed in accordance with the time schedule approved by the Administration, operate and maintain the Plant during periods of actual construction that affect treatment processes so as to at least comply with the following interim performance standards for BOD, Ammonia and TSS:
 - 1. The interim performance standards for biochemical oxygen demand (BOD₅) are:
 - i. Monthly average loading rate of 1,000 lbs/D;
 - ii. Weekly average loading rate of 1,500 lbs/D;
 - iii. Monthly average concentration of 60 mg/l; and

- iv. Weekly average concentration of 90 mg/l.
2. The interim performance standard for ammonia are:
- From 5/1 – 10/31:
- i. Monthly average loading rate of 54 lbs/D;
 - ii. Daily average loading rate of 320 lbs/D;
 - iii. Monthly average concentration of 3.2 mg/l; and
 - iv. Daily average concentration of 19.6 mg/l.
- From 11/1 – 4/30:
- i. Monthly average loading rate of 140 lbs/D;
 - ii. Daily average loading rate of 440 lbs/D;
 - iii. Monthly average concentration of 8.4 mg/l; and
 - iv. Daily average concentration of 26 mg/l.
3. The interim performance standards for total suspended solids (TSS) are:
- i. Monthly average loading rate of 1,000 lbs/D;
 - ii. Weekly average loading rate of 1,500 lbs/D;
 - iii. Monthly average concentration of 60 mg/l; and
 - iv. Weekly average concentration of 90 mg/l.

**INTERIM STANDARDS FOR TOTAL NITROGEN (TN) AND TOTAL
PHOSPHORUS (TP)**

- E. Beginning on the effective date of the Consent Agreement and continuing until December 31, 2016, operate and maintain the Plant so as to at least comply with the following interim performance standards for TN and TP:
- 1. The interim performance standard for TN for the Annual Maximum Loading Rate is 48,728 pounds per year.
 - 2. The interim performance standard for TP for the Annual Maximum Loading Rate is 3,654 pounds per year.

OTHER EFFLUENT LIMITATIONS

- F. All other effluent limitations set forth in the Permit shall remain in full force and the Owner shall comply with each effluent limitation at all times.

STIPULATED PENALTIES

- G. The Owner shall pay stipulated civil penalties to the Maryland Department of the Environment "Clean Water Fund" in accordance with the following criteria:
1. If the Owner fails to complete the Plant ENR upgrade in accordance with the time schedule as approved or amended by the Administration, the Owner shall pay \$100 per day for each day beyond the milestone date required by this Consent Agreement until the requirement is met.
 2. Beginning on the effective date of this Consent Agreement and continuing for one year following completion of Plant upgrade construction, if the Plant has effluent sample values that exceed any applicable monthly interim performance standards during construction or, if no such standard applies, the Permit limitations, the Owner shall pay a stipulated penalty of \$500 for each monthly interim performance standard or Permit limitation that is exceeded.
 3. Beginning on the effective date of this Consent Agreement and continuing for one year following completion of Plant upgrade construction, if the Plant has effluent sample values that exceed any applicable weekly interim performance standards during construction or, if no such standard applies, the Permit limitations, the Owner shall pay a stipulated penalty of \$250 for each weekly interim performance standard or Permit limitation that is exceeded.
 4. Beginning on the effective date of this Consent Agreement and continuing for one year following completion of Plant upgrade construction, if the Plant has effluent sample values that exceed any applicable daily interim performance standards during construction or, if no such standard applies, the Permit limitations, the Owner shall pay a stipulated penalty of \$100 for

each daily interim performance standard or Permit limitation that is exceeded.

5. If the Plant exceeds the interim performance standards for annual maximum loading rates for TN or TP until December 31, 2016, the Owner shall pay \$100 per day for each TN or TP annual maximum loading limit interim performance standard exceedance, beginning on the first day the Plant exceeds the TN or TP annual maximum loading limit interim performance standard in a calendar year and continuing each day through the end of that calendar year prior to December 31, 2016. Beginning on January 1, 2017, the Owner shall pay \$100 per day for each TN or TP annual maximum loading Permit limit exceedance, beginning on the first day the Plant exceeds the TN or TP annual maximum loading Permit limit in calendar year 2017 and continuing each day through the end of that calendar year.

- H. Owner agrees not to contest the amount of a stipulated penalty but reserves the right to contest whether a violation has occurred unless Owner has self-reported such violation on its monthly Discharge Monitoring Report. Neither demand for, nor payment of, stipulated penalties under this Consent Agreement shall be construed as an election of a remedy or other limitation on the Department's discretion to seek any form of injunctive relief available to it under the Environment Article for violations of this Consent Agreement. Nothing in this Consent Agreement shall be construed to limit the Department's discretion to seek, in lieu of stipulated penalties, civil or administrative penalties and any form of injunctive relief available to it under the Environment Article for violations of this Consent Agreement. The absence of stipulated penalties for a violation of this Consent Agreement shall not be construed to limit in any way the Department's discretion to seek civil or administrative penalties, any form of injunctive relief, or any other right, remedy or sanctions available to it for violations of the Consent Agreement, or for any other violation of State law not expressly addressed in the Complaint in this action.

- I. Any stipulated civil penalty due pursuant to this Consent Agreement shall be paid to the Maryland Department of the Environment "Clean Water Fund", in care of the Maryland Department of the Environment, Fiscal Services Division, Cash Receipts/Advance Unit, P.O. Box 2057, Baltimore, Maryland 21203, within 30 days of notification by the Administration. The Administration may in its discretion reduce or waive the penalty if it determines that noncompliance is attributed to a force majeure as described below.

NOTIFICATION

- J. Owner shall notify the Department upon completion of the work required to be performed hereunder. All notifications required under this Consent Agreement shall be in writing and be sent to Ms. Carol Coates, Chief, Enforcement Division, Compliance Program, Water Management Administration, Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, Maryland 21230.

PERSONS BOUND BY AGREEMENT

- K. This Consent Agreement shall be binding upon the Department and the Owner, and their respective agents, employees, successors and assigns. The work required to be performed hereunder by the Owner, his successors and assigns, officers, directors, employees, agents, independent contractors, contractors, subcontractors, and consultants shall be carried out in accordance with the requirements of this Consent Agreement, and each party shall be responsible for the failure of its officers, directors, employees, independent contractors, contractors, subcontractors or consultants to do so.

NO ADMISSIONS OR WAIVERS

- L. Nothing contained herein shall constitute a waiver of the rights of the Department to proceed in an administrative or civil action for violations of the terms of this Consent Agreement or any other violations of Maryland law not alleged in the Complaints

filed in the actions governed by this Consent Agreement. Nor shall anything set forth in this Consent Agreement be deemed to be a waiver of the Owner's right to contest such proceedings by the Department.

M. Nothing in this Consent Agreement shall be construed to relieve the Owners of any violations or obligations under laws and regulations promulgated or enforced by local, municipal, or federal entities.

N. Nothing in this Consent Agreement shall be construed to limit any authority of the Administration to issue any other orders, enforce any applicable permits, or to take any action it deems necessary to protect the public health or comfort, or to limit any authority the Administration now has or may hereafter be delegated, or as a waiver of Owner's obligation to comply with the Permit. The Administration's approval of plans and specifications pursuant to this Consent Agreement does not in any way warrant that the plans and specifications will be successful in controlling water pollution or reducing permit violations. Subject to the preceding two sentences and any amendment or withdrawal of this Consent Agreement, this Consent Agreement shall remain in effect for one year following the approved milestone date for completing the Plant ENR upgrade and achieving compliance with the nitrogen and phosphorus effluent limitations in the Permit and until all obligations required herein have been completed as determined by the Department.

DELAY

O. If any event occurs which causes, or which the Owner reasonably expects to cause, a delay in the achievement of any requirement imposed by this Consent Agreement, the Owner shall notify the Department, in writing, within ten (10) working days of obtaining knowledge of the occurrence of such event and of its impact on timely compliance. The notice shall identify the cause of the delay, an estimate of the anticipated length of delay, the measures taken and to be taken by the Owner to prevent or minimize the delay and an estimate of the

date by which such measures will be completed. The Owner shall promptly implement all reasonable measures to prevent or minimize any such delay and to comply with all requirements of the Consent Agreement as soon as reasonably possible. The Owner may request, in writing, an extension of any deadline at least ten (10) working days prior to such deadline. The Department may, at its sole discretion, grant an extension upon such a request. If such an extension is granted, any stipulated penalty, if applicable, shall not accrue.

FORCE MAJEURE

- P. The Owner shall perform the requirements of this Consent Agreement in the manner and within the time limits set herein, unless the performance is prevented or delayed by events that constitute a force majeure. The Owner shall have the burden of proving such a force majeure. A force majeure is defined as any event or circumstance arising from causes not reasonably foreseeable and beyond the control of the Owner 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 Agreement.
- Q. Circumstances beyond the control of the Owner include earthquake, flood or other act of God, war, riot, injunction, fire, freight embargo, or strike. Such circumstances do not include increased costs of performance, changed economic circumstances, including the lack of necessary funding to accomplish any requirement of the Consent Agreement, or normal inclement weather.
- R. Within ten (10) working days after becoming aware of any event that the Owner believes constitutes a force majeure, the Owner shall notify the Department of such event in accordance with paragraph J herein. Failure to comply with the notice provision of this section shall constitute a waiver of the Owner's rights to assert a force majeure claim.

- S. If the Department determines that the event or anticipated event that has caused or will cause the delay constitutes a force majeure, the Department may extend in writing the time for performance for an appropriate period of time as determined by the Department.

SUBSEQUENT MODIFICATION

- T. This Consent Agreement contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. This Consent Agreement may not be modified except by written agreement of the Department and the Owner and shall be effective upon signature by the Department.

NOT A PERMIT

- U. This Consent Agreement is not and shall not be interpreted to be a license or permit or modification of any existing license or permit.

SEVERABILITY

- V. If any provision or authority of this Consent Agreement or the application of this Consent Agreement to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision or authority to other parties or circumstances and the remainder of this Consent Agreement shall not be affected thereby and shall remain in full force.

TERMINATION

- W. This Consent Agreement shall remain in force and effect until all obligations and terms referred to herein have been completed or satisfied.

FOR MARYLAND DEPARTMENT OF THE ENVIRONMENT:

Date

Jay G. Sakai, Director
Water Management Administration

FOR CECIL COUNTY, MARYLAND:

3/28/13
Date

Alfred C. Wein, Jr.
Attest: Alfred C. Wein, Jr.
Director of Administration

3/21/13
Date

Tari Moore
Tari Moore, County Executive

3/21/13
Date

James E. Massey, Jr.
Attest: James E. Massey, Jr.
Council Administrator

3/21/13
Date

Robert J. Hodge
Robert J. Hodge, President
County Council

Approved as to form and legal sufficiency
this _____ day of _____ 2013

Paul N. DeSantis
Assistant Attorney General