

IN THE CIRCUIT COURT FOR BALTIMORE CITY

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

Plaintiff, *

v. *

MAYOR AND CITY COUNCIL *
OF BALTIMORE, MARYLAND *
250 City Hall *
Baltimore, Maryland 21202 *

Case No: _____

Serve on: *
James L. Shea, City Solicitor *
Baltimore City Solicitor's Office *
Baltimore City Department of Law *
100 North Holliday Street, Suite 101 *
Baltimore, Maryland 21202, *

Defendant. *

* * * * *

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

The Maryland Department of the Environment (the "Department"), by and through its attorneys, Brian E. Frosh, Attorney General, and Jonathan E.C. May and Nathan P. Short, Assistant Attorneys General, files this complaint against the defendant, the Mayor and City Council of Baltimore, Maryland ("Baltimore City"), and alleges as follows:

I. INTRODUCTION

1. The Department brings this civil action against Baltimore City to eliminate the unpermitted discharge of pollution into the waters of this State in violation of State and federal water pollution statutes and regulations, and for civil penalties.

2. Baltimore 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”).

3. Baltimore City’s operation of the Back River and Patapsco WWTPs and the unauthorized discharge of pollutants—including nitrogen and phosphorus—undermines 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.¹

II. WASTEWATER TREATMENT PLANTS

4. For the Back River WWTP, the Department issued Baltimore City, State

¹ The State of Maryland is responsible for reducing pollution that emanates from this State and travels to the Chesapeake Bay pursuant to the Chesapeake Bay Total Maximum Daily Load (“Chesapeake Bay TMDL”), which is a “pollution diet” intended to restore clean water in the Bay and the region’s streams, creeks, and rivers. The Chesapeake Bay TMDL sets 2025 as the deadline for the State to achieve significant reductions of total nitrogen (“TN”) and total phosphorus (“TP”) discharges. To achieve these significant reductions, the Department issued Maryland’s Phase III Watershed Implementation Plan to Restore the Chesapeake Bay by 2025 (“Phase III WIP”). This plan identifies Department-issued discharge permits for wastewater treatment plants as a tool to reduce TN and TP.

Discharge Permit Number 15-DP-0581A, NPDES Number MD0021555,² which became effective May 1, 2018 (the “Back River Discharge Permit”). The Back River Discharge Permit was modified on January 1, 2020, and expires on April 30, 2023. The Back River Discharge Permit is attached hereto as “Exhibit BR1.”

5. 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 at Bear Creek, which flows into the Back River. The Back River then flows into the Baltimore Harbor which flows to the Chesapeake Bay, the largest estuary in the United States and among the most productive 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.

6. 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 expires on September 30, 2022 (the “Patapsco Discharge Permit” or “2015 Patapsco Discharge Permit”) (attached hereto as “Exhibit PT1”).

7. The Patapsco Discharge Permit (a) details the actions that Baltimore City is

² 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 a National Pollutant Discharge Elimination System (“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.

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 also flows to the Chesapeake Bay, and is designated as Use II waters protected for estuarine and marine aquatic life.

8. The Back River and Patapsco Discharge Permits contain requirements and limitations that are identified as "General Conditions" or "Special Conditions." General Conditions are those that are standard requirements in discharge permits issued by the Department, and Special Conditions are those that are tailored to a specific facility, here the Back River and Patapsco WWTPs.

9. Baltimore City has violated numerous General Conditions and Special 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.

10. 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 seeks, and is entitled to recover from Baltimore City: (a) civil penalties; (b) pre- and post-judgment interest; and (c) attorneys' fees and costs.

11. 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.

III. JURISDICTION & VENUE

12. This Court has subject matter jurisdiction under §§ 1-501 and 4-401 of the Courts and Judicial Proceedings Article.

13. This Court has personal jurisdiction by virtue of the Department's authority to obtain civil penalties and injunctive relief pursuant to §§ 9-322, 9-339, and 9-342 of the Environment Article and Maryland Rule 2-124(1).

14. This Court is the proper venue for this action under § 6-201 of the Courts and Judicial Procedures Article.

IV. PARTIES

15. Plaintiff is a State agency within the Executive Branch of the State of Maryland. The Secretary of the Environment is charged with the responsibility to regulate water pollution and to enforce the State's water pollution laws under Title 9, Subtitle 3 of the Environment Article.

16. Defendant Mayor and City Council of Baltimore City, Maryland is a body corporate and politic and authorized under the laws of Maryland.

V. STATUTORY & REGULATORY AUTHORITY

17. “[T]he quality of the waters of this State is vital to the public and private interests of its citizens and because pollution constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water.” Envir. § 9-302(b).

18. “[I]t is State public policy to improve, conserve, and manage the quality of the waters of the State and protect, maintain and improve the quality of water for public supplies, propagation of wildlife, fish and aquatic beneficial uses.” Envir. § 4-402; *see also id.* § 9-302(b).

19. “[I]t is State public policy to provide that no waste is discharged into any waters of this State without first receiving necessary treatment or other corrective action to protect the legitimate beneficial uses of this State’s waters.” Envir. § 4-402; *see also id.* § 9-302(b).

20. As such, “[no] person . . . may discharge any pollutant into the waters of this State” without obtaining authorization (i.e., a discharge permit) from the Department. *See* Envir. §§ 9-322, 9-323.

21. This State’s waters are broadly defined to “include . . . surface and underground waters within the boundaries of this State subject to its jurisdiction . . ., the Chesapeake Bay and its tributaries, and all ponds, lakes, river, streams, storm drain

systems, public ditches, tax ditches, and public drainage systems within this State, other than those designed and used to collect, convey, or dispose of sanitary sewage.” Envir. § 9-101(l).

22. Also broadly defined are the terms “pollutant,” “pollution,” and “discharge,” *see id.* § 9-101(b), (g), & (h), the breadth of which echoes the public policy that the waters of this State are vital, and further provides the Department with expansive authority and a mandate to preserve the quality of the waters of this State.

23. Therefore, before any person may “construct, install, modify, extend, alter, or operate” a system for disposing of wastes in the waters of this State, that person must “hold a discharge permit issued by the Department.” Envir. § 9-323.

24. Any discharge permit issued by the Department must “meet[] . . . [a]ll applicable State and federal water quality standards and effluent limitations.” Envir. §§ 9-314(c), 9-324(a); *see* COMAR 26.08.01-04 (Maryland water quality standards and effluent limitations).

25. Additionally, “[t]he Department may make the issuance of a discharge permit contingent on any conditions the Department considers necessary to prevent violation of” Title 9, Subtitle 3, titled “Water Pollution Control.” Envir. § 9-326(a).

26. The Department has established regulations governing the issuance of discharge permits for disposal systems. COMAR 26.08.04.

27. The Department may also require an “owner or operator of any source of a

discharge of pollutants” to keep records, report to the Department, adhere to monitoring standards, sample effluent, and provide the Department with information about pollutant discharges. Envir. § 9-331.

28. The Department is further empowered to administer and enforce a permittee’s adherence to the requirements of a discharge permit issued under the Water Pollution Control Subtitle. Envir. § 9-319(a)(1).

29. Section 9-342(a) provides for the imposition of civil penalties of up to \$10,000 for each violation of the Water Pollution Control Subtitle, or any regulation, permit, or order issued thereunder in a civil action.

30. Under § 9-339(a), the Department may seek injunctive relief to address violations of any rule, regulation, order, or permit issued pursuant to the Water Pollution Control Subtitle.

VI. FACTUAL ALLEGATIONS

Back River WWTP

31. On or about June 16, 2021, September 20, 2021, and December 29, 2021, the Department conducted inspections at the Back River WWTP. During these inspections, and as a result of reviewing information and materials submitted by Baltimore City before and after these inspections in accordance with the terms of the Permit, the Department observed extensive violations of General and Special Conditions contained in the Back River Discharge Permit.

A. Effluent Limit Exceedances

32. Special Conditions II(A)(1-2) of the Back River Discharge Permit, entitled “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.

33. From May 2017 through November 2021, the Back River WWTP violated the Back River Discharge Permit’s daily, weekly, monthly, quarterly, and annual Effluent Limitations, which include excess discharges of biochemical oxygen demand (“BOD”), E. coli, TN, TP, total suspended solids (“TSS”), and toxicity.

34. Attached hereto as Exhibit BR2 is a table of the Back River WWTP’s daily, weekly, monthly, and quarterly effluent limit exceedances from May 2017 through November 2021, which total 131 total violations, and amount to 2,742 days in violation of the NPDES Permit.

35. Attached hereto as Exhibit BR3 is a table of the Back River WWTP’s TSS, TN, and TP annual effluent limit exceedance for 2021, which total three violations and amounts to 696 days in violation of the Back River Discharge Permit. The data indicating the number of days in violation of the TN and TP effluent limits reflected in Exhibit BR3 are preliminary, as December 2021 effluent data have not yet been submitted to the Department. Upon receipt of TN and TP effluent data for December 2021, the Department will calculate the days in violation based on load data for all twelve months of 2021.

36. Effluent limit exceedances at the Back River WWTP are ongoing.

B. Failure to Report Effluent Limit Exceedances

37. 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.”

38. From August 2020 through May 2021, Baltimore City failed to report effluent limit exceedances at the Back River WWTP 125 times.

39. Attached hereto as Exhibit BR4 is a table of these effluent limit exceedances from the Back River WWTP that Baltimore City did not notify the Department of within 24 hours.

C. Failure to Report Sampling Results

40. General Condition III(A) of the Back River Discharge Permit, entitled “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., discharge monitoring reports (“DMRs”), monthly operating reports) to the Department, and to retain all records and information resulting from these monitoring requirements.

41. Special Condition II(B) of the of the Back River Discharge Permit, entitled “Minimum Monitoring Requirements,” then fills in General Condition III(A) with the requisite what, how, how long, 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.

42. On eight occasions, from January 2017 through June 2021, 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 or quarterly monitoring period; here, resulting in 420 days of violation.

43. Attached hereto as Exhibit BR5 is a table of the incomplete DMR sampling results that Baltimore City did not submit to the Department for the Back River WWTP.

D. PCB Testing and Reporting Failures

44. 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.

45. 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.

46. Special Condition II(F)(4) of the Back River Discharge Permit requires the submission by Baltimore City of 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.

47. Special Condition II(F)(4) of the Back River Discharge Permit requires Baltimore City to 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”).

48. From June 2018 through December 2020, 10 of the 11 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) exceeded the 600 pg/L concentration limit. In these same 11 reports, Baltimore City also failed to submit PCB sampling results, PCB method blank criteria and sampling results, or PCB Congeners results. These errors or omissions are in violation of the Back River Discharge Permit.

49. Errors or omissions in a quarterly report constitute a violation for each day of that quarter, here totaling 990 days of violation.

50. Attached hereto as Exhibit BR6 is a table of these errors and omissions which raise doubt regarding the validity and accuracy of Baltimore City’s Back River WWTP PCB sampling results.

E. Failure to Conduct Confirmatory Whole Effluent Toxicity (“WET”) Testing

51. 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.

52. 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.

53. Baltimore City did not conduct a third confirmatory WET test within 30 days, which is a violation of the Back River Discharge Permit.

F. Failure to Maintain Sampling Equipment

54. 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.”

55. 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.

G. Failure to Efficiently Operate the Back River WWTP & Conduct Necessary Maintenance

56. 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.

57. 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.

58. 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. However, the onset of effluent limit exceedances in August of 2020 indicates that the centrifuge may have begun malfunctioning earlier than January 2021.

59. The Department also 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.

60. The Department also learned that construction was conducted in the "Activation Area," an area of the Back River WWTP that affects discharge water quality.

61. The lack of preventative maintenance, replacement, and repair of equipment

at the Back River WWTP, which occurred concurrently with the onset of adversely affected discharge water quality and effluent limit exceedances, constitutes a violation of the Back River Discharge Permit.

H. Failure to Provide Adequate Operating Staff

62. 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.

63. The June 16, 2021 inspection revealed that only 2 of 76 certified operators at the Back River WWTP were permanently licensed; the remaining 74 had temporary licenses.

64. This staffing of mostly temporary licensed operators indicates that inadequate staffing likely contributed to plant-wide Back River Discharge Permit violations, and is itself a violation of the Back River Discharge Permit.

I. Industrial Stormwater Discharge Permit Violations

65. 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.’”

66. 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 MD000630 (“Back River Stormwater Permit”),

which became effective May 1, 2018, and expires February 13, 2022.

67. On June 16, 2021, the Department conducted an inspection of the Back River WWTP for Back River Stormwater Permit compliance. This inspection revealed 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. provided 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.

68. Baltimore City's failure to comply with the Back River Stormwater Permit is a violation of the Back River Discharge Permit.

J. Failure to Minimize Adverse Impacts

69. 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."

70. 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), constitute significant violations of State and federal water pollution laws, and have contaminated the surface waters of Back River and Bear Creek and caused an adverse impact on the environment.

Patapsco WWTP

71. On or about May 6 through June 4, 2021, October 6 through 11, 2021, and on December 28, 2021, the Department conducted inspections at the Patapsco WWTP. During these inspections, and as a result of reviewing information and materials submitted to the Department by Baltimore City both before and after these inspections in accordance with the terms of the Permit, the Department observed extensive violations of General and Special Conditions contained in the Patapsco Discharge Permit.

A. Effluent Limit Exceedances

72. Special Conditions II(A)(1-2) of the Patapsco Discharge Permit, entitled

“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.

73. From January 1, 2020, through December 31, 2021, the Patapsco WWTP violated the Patapsco Discharge Permit’s weekly, monthly, seasonal, and annual Effluent Limitations, which include excess discharges of BOD, enterococci, TN, TP, and TSS.

74. Attached hereto as Exhibit PT2 is a table of the Patapsco WWTP’s weekly and monthly effluent limit exceedances from January 1, 2020, through November 30, 2021, which total 23 violations and amount to 575 days in violation of the Patapsco Discharge Permit.

75. Attached hereto as Exhibit PT3 are tables of the Patapsco WWTP’s TN and TP seasonal and annual effluent limit exceedances from January 1, 2020, through November 30, 2021, which total eight violations and presently amount to 1,411 days in violation of the Patapsco Discharge Permit.

76. The data indicating the number of days in violation of the TN and TP effluent limits reflected in Exhibit PT3 are preliminary, as December 2021 effluent data have not yet been submitted to the Department. Upon receipt of TN and TP effluent data for May and December 2021, the Department will calculate the days in violation based on effluent data for all twelve months of 2021.

77. Effluent limit exceedances at the Patapsco WWTP are ongoing.

B. Failure to Report Sampling Results

78. General Condition III(A) of the Patapsco Discharge Permit, entitled “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.

79. Special Condition II(B) of the Patapsco Discharge Permit, entitled “Minimum Monitoring Requirements,” then fills in General Condition III(A) with the requisite what, how, how long, 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.

80. On 18 occasions, from June 2017 through August 2021, 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 that calendar month, here totaling 540 days of violation.

81. Attached hereto as Exhibit PT4 is a table of the incomplete DMR sampling results that Baltimore City did not submit to the Department for the Patapsco WWTP.

C. Sampling, Analysis, & Reporting Failures

82. Additionally with respect to General Condition III(A), entitled “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.

83. These broad operational deficiencies bring into question the accuracy of reported sampling data.

D. PCB Testing and Reporting Failures

84. 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.

85. 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.

86. Special Condition II(F)(4) of the Patapsco Discharge Permit requires the submission by Baltimore City of 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.

87. 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.

88. During an inspection and review of the Patapsco WWTP’s operation from May 6 through June 4, 2021, the Department learned 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. And, 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.

89. Separately, the Patapsco WWTP's total PCB loading for 2020 (123.2 grams) was approximately four and a half times its permit effluent limit of 27.2 grams, in violation of Special Condition II(A)(1) n.4(b) of the Patapsco Discharge Permit.

E. Toxic Chemical Testing Failures

90. Special Condition II(B)(1) n.16 of the Patapsco Discharge Permit requires Baltimore City to perform toxic chemical testing and monitoring.

91. 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.

92. During an inspection and review of the Patapsco WWTP's operation from May 6 through June 4, 2021, the Department learned 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 was incomplete; and

d. the reporting limit used for Chromium VI was 10 µg/L, not the required 0.1 µg/L reporting limit.

F. Failure to Timely Submit Wastewater Capacity Management Plan

93. 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”).

94. 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.”

95. 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.

96. Baltimore City’s subsequent submittal of a 2020 WCMP, on August 31, 2021, was seven months late, in violation of the Patapsco Discharge Permit.

G. Systemic Fat, Oil, & Grease (“FOG”) Mitigation Failures

1. 2010 NPDES Permit Violations

97. The Patapsco WWTP’s previous discharge permit, State Discharge Permit Number 10-DP-0580, NPDES Number MD0021601, effective October 1, 2010, and expired September 30, 2015 (the “2010 Patapsco Discharge Permit”), prohibited the

“discharge of floating solids or visible foam other than trace amounts.” Special Condition II(A)(1) n.1.

98. Since at least May 20, 2013, the Department has documented the “unauthorized discharges of floating solids, identified as fats, oil, and grease” in violation of Special Condition II(A)(1) n.1 of the 2010 Patapsco Discharge Permit.

99. In response to these persistent violations, the Department and Baltimore City entered into an administrative consent order, CO-16-2405, on June 7, 2016 (the “FOG Consent Order”), to cease these unauthorized discharges of FOG.

100. Section 5 of the FOG Consent Order required Baltimore City to “submit a plan and schedule for the repair of the skimmers at the Patapsco WWTP within 60 days.”

101. On November 24, 2017, Baltimore City submitted a FOG Mitigation Plan. Shortly thereafter, Baltimore City submitted a FOG Mitigation Plan Revision (“Revised FOG Plan”).

102. The Revised FOG Plan required Baltimore City to:

- a. upgrade the pump and scum removal systems for all primary settling tanks (“PSTs”),
- b. replace the flight plant brackets on PST nos. 2 through 6,
- c. install scum trough (skimmer) with actuated adjustment rods in PST nos. 1 through 3,

103. During the May 6, 2021 inspection of the Patapsco WWTP, the Department

learned that Baltimore City did not complete any of this work, in violation of the Patapsco Discharge Permit. This Patapsco WWTP inspection also revealed that only five PSTs were in operation, not 18 as required by the Revised FOG Plan, again in violation of the Patapsco Discharge Permit.

2. *2015 NPDES Discharge Permit Violations*

104. 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.”

105. 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.”

106. On or about May 4, 2021, Blue Water Baltimore³ 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.

107. Baltimore City also failed to submit FOG mitigation plans to the Department in 2018, 2019, 2020, or 2021 in violation of Special Condition II(M) of the 2015 NPDES Discharge Permit.

H. Failure to Provide Adequate Operating Staff

108. General Condition III(B)(3)(b) of the Patapsco Discharge Permit requires Baltimore City to adequately staff the Patapsco WWTP with sufficient qualified personnel.

³ Blue Water Baltimore is a 501(c)(3) nonprofit organization located in Baltimore.

109. On September 7, 2021, Baltimore City informed the Department that only five of its 45 certified operators or superintendents at the Patapsco WWTP were permanently licensed; the remaining 40 had temporary licenses.

110. This staffing of mostly temporary licensed operators is indicative of inadequate staffing that likely contributed to plant-wide Patapsco Discharge Permit violations, and is itself a violation of the Patapsco Discharge Permit.

G. Failure to Efficiently Operate the Patapsco WWTP & Conduct Necessary Maintenance

111. 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.

112. The May 6, 2021 Patapsco WWTP inspection revealed systemic operational and maintenance failures that affected discharge water quality, including, but not limited to, deficient FOG Mitigation Plan implementation. The lack of preventative maintenance, replacement, and repair of equipment at the plant occurred concurrently with the onset of adversely effected discharge water quality and effluent limit exceedances and constitutes a violation of the Patapsco Discharge Permit.

I. Failure to Minimize Adverse Impacts

113. 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.”

114. 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), constitute significant violations of State and federal water pollution laws, and have contaminated the surface waters of Patapsco River and caused an adverse impact on the environment.

COUNT I
Violation of Envir. §§ 9-322 and 9-323
(Unauthorized Discharge of Pollutants from Back River WWTP)

115. The Department re-alleges and incorporates by reference the allegations of all prior paragraphs of this complaint.

116. Baltimore City has violated §§ 9-322 and 9-323 of the Environment Article by discharging unauthorized pollution from the Back River WWTP into the Back River in violation of the Back River Discharge Permit.

117. Unless enjoined by an order of the Court, violations of the Back River Discharge Permit and Title 9, subtitle 3 of the Environment Article are likely to continue.

118. Under § 9-342 of the Environment Article, a person who violates any provision of the subtitle or any rule, regulation, order, or permit adopted or issued under the subtitle is liable for a civil penalty not exceeding \$10,000 to be collected in a civil action brought by the Department. Each day a violation occurs is a separate violation.

119. Under § 9-339 of the Environment Article, the Department may bring an action for injunctive relief against any person who violates any provision of Title 9, subtitle 3, on a showing that the violation is ongoing or about to occur.

COUNT II

**Violation of Envir. §§ 9-326 and 9-331
(Failure to Comply with Conditions in the Back River Discharge Permit)**

120. The Department re-alleges and incorporates by reference the allegations of all prior paragraphs of this complaint.

121. Baltimore City has violated §§ 9-326 and 9-331 of the Environment Article by failing to comply with several General and Special Conditions contained in the Back River Discharge Permit.

122. Unless enjoined by an order of the Court, violations of the Back River Discharge Permit and the Title 9, subtitle 3 of the Environment Article are likely to continue.

123. Under § 9-342 of the Environment Article, a person who violates any provision of the subtitle or any rule, regulation, order, or permit adopted or issued under the subtitle is liable for a civil penalty not exceeding \$10,000 to be collected in a civil action brought by the Department. Each day a violation occurs is a separate violation.

124. Under § 9-339 of the Environment Article, the Department may bring an action for injunctive relief against any person who violates any provision of Title 9, subtitle 3, on a showing that the violation is ongoing or about to occur.

COUNT III
Violation of Envir. §§ 9-322 and 9-323
(Unauthorized Discharge of Pollutants from Patapsco WWTP)

125. The Department re-alleges and incorporates by reference the allegations of all prior paragraphs of this complaint.

126. Baltimore City has violated §§ 9-322 and 9-323 of the Environment Article by discharging unauthorized pollution from the Patapsco WWTP into the Patapsco River which flows into the Baltimore Harbor which flows into the Chesapeake Bay in violation of the Patapsco Discharge Permit.

127. Unless enjoined by an order of the Court, violations of the Patapsco Discharge Permit and Title 9, subtitle 3 of the Environment Article are likely to continue.

128. Under § 9-342 of the Environment Article, a person who violates any provision of the subtitle or any rule, regulation, order, or permit adopted or issued under the subtitle is liable for a civil penalty not exceeding \$10,000 to be collected in a civil action brought by the Department. Each day a violation occurs is a separate violation.

129. Under § 9-339 of the Environment Article, the Department may bring an action for injunctive relief against any person who violates any provision of Title 9, subtitle 3, on a showing that the violation is ongoing or about to occur.

COUNT IV
Violation of Envir. §§ 9-326 and 9-331
(Failure to Comply with Conditions in the Patapsco Discharge Permit)

130. The Department re-alleges and incorporates by reference the

allegations of all prior paragraphs of this complaint.

131. Baltimore City has violated §§ 9-326 and 9-331 of the Environment Article by failing to comply with several General and Special Conditions contained in the Patapsco Discharge Permit.

132. Unless enjoined by an order of the Court, violations of Patapsco Discharge Permit and the Title 9, subtitle 3 of the Environment Article are likely to continue.

133. Under § 9-342 of the Environment Article, a person who violates any provision of the subtitle or any rule, regulation, order, or permit adopted or issued under the subtitle is liable for a civil penalty not exceeding \$10,000 to be collected in a civil action brought by the Department. Each day a violation occurs is a separate violation.

134. Under § 9-339 of the Environment Article, the Department may bring an action for injunctive relief against any person who violates any provision of Title 9, subtitle 3, on a showing that the violation is ongoing or about to occur.

PRAYER FOR RELIEF

WHEREFORE, the Maryland Department of the Environment respectfully requests that this Court enter judgment in its favor against Baltimore City, granting the following civil penalties and permanent injunctive relief:

A. That the Court require Baltimore City to cease discharging any pollutants to waters of the State of Maryland from the WWTPs which are not authorized by a discharge

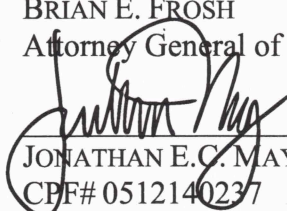
permit issued by the Department, and require Baltimore City to take all steps necessary to come into permanent and consistent compliance with the prohibition on unpermitted discharges and compliance with §§ 9-322 and 9-323 of the Environment Article;

B. That the Court assess civil penalties against Baltimore City of up to \$10,000 per violation per day pursuant to § 9-342 of the Environment Article of the Maryland Code;

C. That the Court award such other relief as it deems just and equitable.

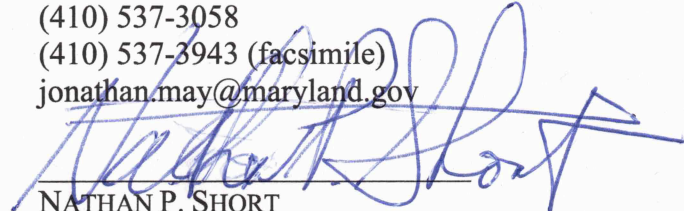
Respectfully submitted,

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