

**STATE OF MARYLAND
DEPARTMENT OF THE
ENVIRONMENT**

**1800 Washington Boulevard
Baltimore, Maryland 21230**

v.

**BOARD OF COUNTY
COMMISSIONERS,
CALVERT COUNTY, MARYLAND
175 Main Street
Prince Frederick, MD 20678**

AND

**CALVERT COUNTY
Department of Public Works
175 Main Street
Prince Frederick, Maryland 20678**

IN THE MATTER OF:

**Marley Run Wastewater
Treatment Plant
Cox Road
Huntingtown, Maryland 20639**

**SECRETARY OF THE
ENVIRONMENT**

**WATER MANAGEMENT
ADMINISTRATION
1800 Washington Boulevard
Baltimore, Maryland 21230**

CO-07-0443

* * * * *

COMPLAINT AND CONSENT ORDER

COMPLAINT

The State of Maryland, Department of the Environment (“MDE”), pursuant to the powers, duties, and responsibilities vested in and imposed upon the Secretary of the Environment by the provisions of Environment Article, Title 9, Subtitles 2 and 3, Annotated Code of Maryland, as delegated to the Director of the Water Management Administration (“Administration”), has conducted an investigation of the Marley Run Wastewater Treatment Plant (“Plant”), located at Cox Road, Huntingtown, Calvert County, Maryland and has reasonable grounds to believe that

Calvert County Department of Public Works, owner of the Plant ("Owner"), has violated Maryland law regarding water pollution control.

1. On September 1, 1998, the Department issued State Groundwater Discharge Permit 97-DP-3232 ("Permit") to the County pursuant to Environment Article, Title 9 and the regulations promulgated thereunder. On August 1, 2004 the Department renewed the Permit under Permit No. 03-DP-3232. The Permit authorizes the discharge of sanitary wastewater from the Plant to groundwaters of the State. A copy of the Permit is attached hereto and incorporated herein as Exhibit "A".

2. The terms and conditions of the Permit limit the discharge of pollutants in the effluent from the Plant. These limitations apply, inter alia, to total nitrogen, biochemical oxygen demand ("BOD"), and total suspended solids ("TSS") as follows:
 - a. Total nitrogen monthly average concentration of 22 milligrams per liter (mg/l);
 - b. BOD monthly average concentration of 20 mg/l; and
 - c. TSS monthly average concentration of 20 mg/l.

3. According to Special Condition I.B.1.a of the Permit, the Owner is required to submit to the Administration monthly Discharge Monitoring Reports ("DMRs"). DMRs submitted from December 1, 2001 through November 30, 2005 reveal that the Plant has failed to meet the Permit effluent limitations for total nitrogen, BOD and TSS in violation of Environment Article 9-322, Annotated Code of Maryland. The specific violations are attached hereto and incorporated herein as Exhibit "B".

4. By letter dated August 21, 2002, the Administration notified the Owner of the violations reported from December 2001 through March 2002 and requested that the proposed corrective actions necessary to allow the Plant to meet the permitted effluent limits be submitted for review pending further enforcement action. The Owner replied to this inquiry indicating that the cause of the violations was a lack of biomass activity in the Plant. To remedy this, the Owner re-seeded the Plant with activated sludge on two occasions and added timers on the Plant's air blowers to provide better control of aeration to improve the denitrification process.

5. By letter dated April 28, 2003, the Owner reported additional violations of the permitted effluent limits for total nitrogen, BOD, and TSS on DMRs during the period of December 2002 through March 2003 and that a consultant had been hired to evaluate possible corrective actions at the Plant to prevent additional violations. The Administration replied by letter dated May 12, 2003 that based on the previous violations reported for the Plant in 2002, significant plant improvements might be required to ensure long term compliance with the Permit. The Plant continued to report violations of the permitted effluent limits.

6. By letter dated January 14, 2004, the Department forwarded a proposed consent order to the Owner for review and comment. In response, the Owner requested a meeting between MDE, Owner personnel and their consultants to discuss possible improvements necessary to maximize the performance of the Plant.

7. On February 25, 2004, MDE personnel met with the Owner and the Plant design engineer. During this meeting, the Owner explained that they were not able to maintain a viable biomass in the treatment units during the winter because of low ambient air temperatures. The Owner proposed holding all treated wastewater in the holding lagoon and not discharging during the winter months while they continued to initiate corrective actions in an effort to improve performance of the Plant. The stored effluent would be re-introduced into the Plant after the Plant had been re-seeded and a viable biomass established. The Owner proposed installing a new above ground double-insulated influent pipe in an effort to keep a higher influent temperature to promote increased biomass growth.

8. By letter dated May 5, 2004, MDE forwarded the revised proposed consent order to the Owner for review and signature. The Owner failed to sign the consent order or negotiate revisions to the document.

9. In June 2004, the Owner resumed discharging treated effluent at the Plant after performing the corrective actions described in Paragraph 7 above. DMRs submitted for June, July, and August 2004 revealed continued significant violations of the permitted effluent limits. By letter dated December 13, 2004, MDE expressed concern that the Owner had failed to enter into the proposed consent order after good faith efforts to revise the document in a manner that would be acceptable to both parties. Further, the corrective actions implemented by the Owner to improve the performance of the Plant had not been successful in achieving compliance.

10. By letter dated December 23, 2004, the Owner stated that they had hired an independent consultant to evaluate the Plant's performance and that this evaluation indicated that several chemicals atypical of domestic wastewater, including toluene, red phosphorus, phenol and toluene, were killing the biomass in the treatment units of the Plant, inhibiting the ability to remove nitrogen from the effluent. Further, the Owner indicated that the atypical chemicals may be the result of illegal activities and the Calvert County Sheriff's Department was conducting an investigation.

11. On February 28, 2005, the Owner notified MDE that preliminary sampling results reported by their consultant indicated high zinc, phosphorus, copper, and lead concentrations in wastewater isolated from a sewer segment that serviced 16 residences. Additionally, one sample exhibited an atypical color (reddish pink), which the Owner speculated was the result of disposal of unauthorized chemicals to the sewer collection system. The Owner's consultant recommended eliminating the source of the unauthorized chemicals prior to further analysis of the Plant's performance.

12. The Administration notified the Owner by letter dated October 18, 2005, that MDE had been informed that the Calvert County Sheriff Office had completed the investigation of the alleged unauthorized disposal of chemicals to the Plant collection system and that the investigation did not reveal evidence substantiating the Owner's claim that the unauthorized disposal of chemicals was the cause of the reported violations of the permitted effluent limits. Further, the letter notified the Owner that MDE believed additional corrective measures including further improvements or upgrades to the treatment process was necessary to ensure long term compliance with the Permit.

13. The Administration met with the Owner and their consultant on November 23, 2005 to discuss the results of the raw wastewater testing efforts to identify the source of the atypical wastewater that was adversely affecting the Plant's performance. These efforts included additional sampling of suspect sewer segments including obtaining samples from the grinder pumps of 16 residences. While the investigation revealed high concentrations of copper and the presence of industrial compounds such as toluene and phenol, there was no indication of the source of these compounds in the suspect residences (ref. 11/8/05 Memo, Stearns & Wheeler, LLC, pg. 18).

14. The Owner proposes to conduct a pilot study to evaluate treatment options that will adequately treat the periodic influxes of atypical wastewater and based on the results of the study, complete upgrades to the existing Plant that will enable long term compliance with the permitted effluent limits.

15. The Administration has determined that the Owner must take additional reasonable, timely steps to minimize any adverse impact to waters of this State, human health or the environment, resulting from noncompliance with any effluent limitation as specified in Special Condition I.A of the Permit. The failure to achieve the discharge limitations contained in the Permit constitutes violations of the Permit and Environment Article 9-322 and 9-323, Annotated Code of Maryland.

16. Environment Article, Section 9-334, Annotated Code of Maryland, provides that MDE shall issue a written complaint if it has reasonable grounds to believe a person has violated Subtitle 3 or any permit issued under Subtitle 3. Environment Article, Section 9-335, Annotated Code of Maryland, provides that MDE may, concurrently with a complaint, issue an order that requires a person to take corrective action within the time set in the order.
17. Environment Article, Section 9-342, Annotated Code of Maryland, permits MDE to impose an administrative penalty for violations of Subtitle 3. The penalty may be up to \$1,000 per day for each violation, not to exceed \$50,000.
18. The Administration is, therefore, entitled to immediately order the Owner to take corrective action pursuant to Environment Article, Section 9-335, Annotated Code of Maryland and to issue administrative penalties of up to \$1,000 per day for each such violation pursuant to Environment Article, Sections 9-342, Annotated Code of Maryland.
19. The Administration and the Owner have agreed to enter into this Consent Order to ensure that appropriate process modifications or other corrective measures are completed by the Owner to allow the Plant to consistently meet the permitted effluent limits. In addition, the Owner agrees to pay stipulated penalties for any future noncompliance with the interim performance standards established herein until corrective actions have been completed pursuant to this Consent Order.

CONSENT ORDER

THEREFORE, it is this 22nd day of February, 2007, pursuant to Environment Article, Sections 9-322, 9-335, and 9-342, Annotated Code of Maryland, **AGREED** between the Director of the Water Management Administration and the Owner and **ORDERED** by the Director of the Water Management Administration that the Owner shall:

1. Within 30 days after the execution dated of this Consent Order, submit to the Administration for review and a protocol to perform activated sludge pilot testing on the Plant influent wastewater that will evaluate an alternative biological process. The activated sludge pilot testing shall be completed within 180 days of approval of the pilot protocol.
2. Within 30 days after the completion of the activated sludge pilot study, submit to the Department for review and approval, a plan and schedule for corrective actions that will allow the Plant to consistently comply with the current Permit effluent limitations.
3. Within 15 days of notification by the Department of approval of the proposed plan and schedule for corrective actions, the Owner shall implement and complete the plan in accordance with the approved schedule.

4. Beginning on the effective date of this Consent Order and continuing until the Plant corrective actions are completed, operate and maintain the Plant so as to at least comply with the following interim performance standards:
 - a. Total nitrogen monthly average concentration of 44 mg/l;
 - b. BOD monthly average concentration of 40 mg/l; and
 - c. TSS monthly average concentration of 40 mg/l.
5. All other effluent limits and other terms and conditions of the Permit shall remain in full force and effect and shall be complied with by the Owner. The terms and conditions of the Permit require the Owner to efficiently operate the Plant to minimize upsets and discharges of excessive pollutants. The Owner shall make every reasonable effort to optimize performance of the Plant during the effective period of this Consent Order to comply with the Permit limits and to prevent adverse impacts to groundwaters of the State resulting from discharges from the Plant.
6. The Owner shall pay a stipulated penalty to the Maryland Department of the Environment "Clean Water Fund" in accordance with the following criteria:
 - a. If the Owner reports any violations of the interim performance standards established above during the term of this Consent Order, the Owner shall pay \$200 for every monthly average concentration violation.
 - b. If the Owner fails to submit a plan or schedule required by this Consent Order to the Administration, or if the Owner fails to complete work required by this Consent Order in accordance with a plan or schedule as approved or amended by the Administration, the Owner shall pay \$100 per day for each day beyond the milestone date set forth in this Consent Order or the applicable schedule until the requirement is met.

7. Any stipulated civil penalty due pursuant to this Consent Order 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, P.O. Box 2057, Baltimore, Maryland 21203, within 30 days of notification by the Administration.
 - a. The Administration may in its discretion reduce or waive the penalty if it determines that noncompliance is beyond the reasonable control of and without the fault of the Owner. Circumstances beyond the reasonable control of the Owner include acts of God; war; riot; civil commotion; sabotage; illegal Federal or State failure to grant any required permit; strike or other labor action; fire; flood; epidemic; quarantine restriction; embargo; or any other similar event not within the control of the Owner. Increased cost or equipment disputes shall not constitute an appropriate justification to excuse noncompliance with any of the terms of this Consent Order.
 - b. The Owner shall notify the Administration in writing within 10 days of the event which causes or may cause delay, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Owner to prevent or minimize the delay, and a timetable by which those measures will be implemented. The Owner shall adopt all reasonable measures to avoid or minimize any such delay.
 - c. Failure by the Owner to comply with the notice requirements of paragraph b., above, constitutes a waiver of the Owner’s right to request an extension of the Owner’s obligation under this Consent Order based on such incident.

- d. The burden of proving that any such delay was beyond the control of, and without the fault of, the Owner is on the Owner.
8. The Administration reserves the right to seek civil penalties beyond the penalty provisions specified in this Consent Order up to the statutory maximum and other appropriate relief should MDE conclude that the penalty provisions have been or will be ineffective in securing timely compliance.
9. Nothing in this Consent Order shall be construed to limit any authority of the MDE to issue any other Order, enforce any applicable permits, or take any action it deems necessary to protect the public health or comfort, or to limit any authority MDE or the Administration now has or may hereafter be delegated. The Administration's approval of plans and specifications pursuant to this Consent Order does not in any way warrant that the plans and specifications will be successful in controlling water pollution or reducing wastewater discharge violations. Subject to the preceding two sentences and any amendment to this Consent Order, this Consent Order shall be in effect until all corrective actions have been completed in accordance with the approved plan and schedule.

IT IS SO AGREED AND CONSENTED TO:

2/22/07
Date

Virginia F. Kearney, Acting
~~Robert M. Summers, Director~~
Water Management Administration

Date

Wilson H. Parran
Wilson H. Parran, President
Board of County Commissioners
Calvert County, Maryland

Date

Susan Shaw
Susan Shaw, Vice President
Board of County Commissioners
Calvert County, Maryland

Date

Gerald W. Clark
Gerald W. Clark, Commissioner
Board of County Commissioners
Calvert County, Maryland

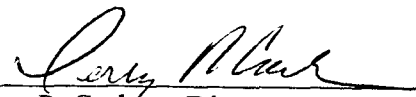
Date

Linda L. Kelley
Linda L. Kelley, Commissioner
Board of County Commissioners
Calvert County, Maryland

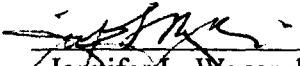
Date

Barbara Stinnett, Commissioner
Board of County Commissioners
Calvert County, Maryland

1/10/07
Date


Terry P. Carlson, Director
Calvert County Department of Public Works

Approved as to form and legal sufficiency
this 25th day of February, 2006


Jennifer L. Wazenski
Assistant Attorney General

Approved as to form and legal sufficiency
this 1/9 day of January, 2007

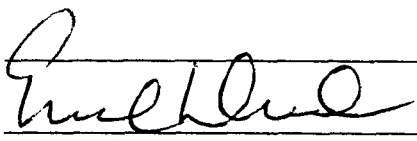

Emanuel Demedis
Calvert County Attorney's Office

EXHIBIT B

| MARLEY RUN EFFLUENT LIMIT VIOLATIONS | | |
|---|------------------|--|
| Date | Pollutant | Month Avg. Conc. Limit/ Violation |
| 11/30/05 | Nitrogen | 22/63 |
| 10/31/05 | Nitrogen | 22/42 |
| 08/31/05 | Nitrogen | 22/30 |
| 06/30/05 | Nitrogen | 22/39 |
| 05/31/05 | Nitrogen | 22/56 |
| 04/30/05 | Nitrogen | 22/52 |
| 03/31/05 | Nitrogen | 22/46 |
| 02/28/05 | Nitrogen | 22/54 |
| 01/31/05 | Nitrogen | 22/52 |
| 12/31/04 | Nitrogen | 22/38 |
| 11/30/04 | Nitrogen | 22/31 |
| 10/31/04 | Nitrogen | 22/42 |
| 09/30/04 | Nitrogen | 22/49 |
| 08/31/04 | Nitrogen | 22/27 |
| 07/31/04 | Nitrogen | 22/43 |
| 06/30/04 | Nitrogen | 22/40 |
| 12/30/03 | Nitrogen | 22/36 |
| 07/30/03 | Nitrogen | 22/35 |
| 06/30/03 | Nitrogen | 22/43 |
| 05/31/03 | Nitrogen | 22/44 |
| 04/30/03 | Nitrogen | 22/53 |
| 03/31/03 | Nitrogen | 22/35 |
| 02/28/03 | Nitrogen | 22/44 |
| 01/31/03 | Nitrogen | 22/34 |
| 12/31/02 | Nitrogen | 22/40 |
| 11/30/02 | Nitrogen | 22/24 |
| 03/31/02 | Nitrogen | 22/44 |
| 02/28/02 | Nitrogen | 22/33 |
| 12/30/01 | Nitrogen | 22/27 |
| 11/30/05 | BOD | 20/28 |
| 10/31/05 | BOD | 20/21 |
| 07/31/05 | BOD | 20/22 |
| 06/30/05 | BOD | 20/44 |
| 05/31/05 | BOD | 22/58 |
| 04/05/05 | BOD | 20/98 |
| 03/31/05 | BOD | 22/39 |

MARLEY RUN EFFLUENT LIMIT VIOLATIONS

| Date | Pollutant | Month Avg. Conc. Limit/ Violation |
|-------------|------------------|--|
| 02/28/05 | BOD | 22/30 |
| 01/31/05 | BOD | 20/49 |
| 12/31/04 | BOD | 20/23 |
| 11/30/04 | BOD | 20/28 |
| 10/31/04 | BOD | 20/26 |
| 09/30/04 | BOD | 20/28 |
| 08/31/04 | BOD | 20/22 |
| 07/31/04 | BOD | 20/24 |
| 12/31/03 | BOD | 20/34 |
| 07/31/03 | BOD | 20/26 |
| 06/30/03 | BOD | 20/38 |
| 05/31/03 | BOD | 20/42 |
| 03/31/03 | BOD | 20/29 |
| 02/28/03 | BOD | 20/53 |
| 01/31/03 | BOD | 20/44 |
| 12/31/02 | BOD | 20/23 |
| 04/30/05 | TSS | 20/62 |
| 03/31/05 | TSS | 20/34 |
| 01/31/05 | TSS | 20/36 |
| 11/30/04 | TSS | 20/24 |
| 12/30/03 | TSS | 20/36 |
| 03/31/03 | TSS | 20/23 |
| 02/28/03 | TSS | 20/41 |
| 01/31/03 | TSS | 20/37 |
| 12/31/02 | TSS | 20/22 |
| 11/30/02 | TSS | 20/22 |

