

(ii) Order works to be executed.

(2) The Secretary may:

(i) Require any public water supply system, public sewerage system, or refuse disposal system to be operated in a manner that will protect public health and comfort; and

(ii) Order the alteration, extension, or replacement of any public water supply system, public sewerage system, or refuse disposal system.

2. If a person or a municipality fails to comply with an order of the Secretary, the General Assembly also has granted the Secretary broad authority, under Natural Resources Article §3-109, to direct the Service to install and put into operation sewerage disposal projects, to provide projects necessary to abate pollution, and to take charge of, operate and alter sewerage systems and works necessary to comply with and achieve the results demanded by the Secretary's order, and to abate the pollution. The same statute further provides that the person or municipality against whom the Secretary's order was issued shall bear the costs of the projects and services provided by the Service.

FACTUAL BACKGROUND

3. The Mayor and City Council of Baltimore ("Baltimore City") applied for, and the Department established conditions and requirements and authorized Baltimore City, pursuant to Title 9, subtitle 3 of the Environment Article and NPDES Discharge Permit Number MD0021555, State Discharge Permit Number 15-DP-0581A (effective May 1, 2018; modified January 1, 2020; expires April 30, 2023) ("Back River Discharge Permit"), to discharge from the Back River Wastewater Treatment Plant ("Back River WWTP" or the "Plant"), located at 8201 Eastern Avenue, Baltimore, Maryland.

4. The Back River Discharge Permit details the actions that Baltimore City is required to take to operate the Back River WWTP. The Back River, which is designated as Use II waters protected for estuarine and marine aquatic life, then flows to the Chesapeake Bay.

5. 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 noncompliance with the terms of the General and Special Conditions contained in the Back River Discharge Permit.

6. On March 22, 2022, the Department conducted an additional inspection of the Back River WWTP. This inspection revealed a significant decline of the functioning of several critical processes at the Plant in comparison with prior Department inspections. The March 22, 2022, inspection revealed significantly increased noncompliance with the Back River Discharge Permit that is causing new or increased unpermitted discharges to Back River.

7. Therefore, pursuant to § 9-252(a) of the Environment Article, to prevent or correct pollution of the waters of the State and to ensure the Back River WWTP is operated in a manner that will protect public health and comfort, the Secretary of the Environment ordered Baltimore City on March 24, 2022, to operate the Back River WWTP in compliance with all terms of the Back River Discharge Permit, including, but not limited to, providing an adequate number of operating staff that are qualified to carry out the operations, maintenance, and testing functions required to ensure compliance with the Back River Discharge Permit, and to cease all unpermitted discharges from the Back River WWTP. The Secretary further ordered Baltimore City to make

all necessary and appropriate alterations to the Back River WWTP and its operations in order to comply with the March 24, 2022, order, and within 48 hours of service of the order, to submit to the Department sufficient documentary evidence that the Back River WWTP is operating in compliance with all terms of the Back River Discharge Permit and that it has ceased all unpermitted discharges.

8. On March 26, 2022, following another inspection of the Back River WWTP by the Department, the Department determined that Baltimore City failed to comply with the March 24, 2022 Order. The Department, on March 27, 2022, then issued a directive to the Service pursuant to § 3-109(c) and § 3-109(d) of the Natural Resource Article. Since issuance of that directive, the Service has been present on site at the Back River WWTP and has been implementing the terms of the directive.

9. On June 10, 2022 pursuant to § 9-252(a) of the Environment Article, to prevent or correct pollution of the waters of the State and to ensure the Back River WWTP is rehabilitated and operated in a manner that will protect public health and comfort, the Secretary and Baltimore City entered into a Consent Order (“Consent Order”), which provides, among other things, that Baltimore City will (1) withdraw its challenge to the March 24, 2022, order, and (2) cooperate fully with the Service in its execution of this Revised Directive for the Back River WWTP. Simultaneously with the issuance of the Consent Order, the Service and Baltimore City entered into a Reimbursement Agreement, regarding the costs, rental, charges, and other fees to be paid by Baltimore City to the Service for the projects provided by MES pursuant to this Revised Directive, as contemplated by § 3-109(b)(2) of the Natural Resources Article (“Reimbursement Agreement”).

10. The Department has determined that this Revised Directive is necessary and appropriate in order to prevent or correct pollution of the waters of the State and to ensure the Back River WWTP is rehabilitated and operated in a manner that will protect public health and comfort.

REVISED DIRECTIVE TO THE SERVICE

11. Pursuant to § 3-109 of the Natural Resource Article, the Secretary hereby DIRECTS that the Service provide projects necessary to abate pollution resulting from operations at the Back River WWTP, and to work with Baltimore City on its operations, maintenance, and improvements functions in order to ensure that Baltimore City meets the following objectives: protect public and environmental health; abate any further nuisances; provide appropriate levels of qualified staff; conduct appropriate maintenance, improvements, and modifications; operate the Back River WWTP in compliance with all terms of the Back River Discharge Permit; and cease all unpermitted discharges from the Back River WWTP.¹ The Service shall work with Baltimore City to the extent it deems practicable, but in any event, shall take action and provide projects necessary to abate pollution and achieve the aforementioned objectives with the means and methods the Service believes are most effective. Specifically, the Service shall undertake projects to ensure that the Back River WWTP is operated in compliance with all terms of the Back River Discharge Permit and cease all unpermitted discharges from the Back River WWTP, which shall include:

- a. Evaluation, repair and refurbishment of at least 2 of the primary settling tanks (“PSTs”);

¹ Nothing in this Revised Directive imposes liability on the Service under Title 9, subtitle 3 for violations of the Back River Discharge Permit.

- b. Coordination with Baltimore City, the Department and outside vendors for the removal of accumulated solids from the Plant and transport of the solids to off-site disposal facilities;
- c. Evaluate and repair of 9 return activated sludge (RAS) pumps.
- d. Evaluate and repair pumps related to the sludge thickening, recirculation, and effluent processes;
- e. Evaluate and repair mixers in the activated sludge area;
- f. Evaluate and repair centrifuges in the sludge dewatering area;
- g. Clean and repair Anaerobic Digesters 1 and 4;
- h. Evaluate, repair and/or replace any other equipment necessary for the proper functioning of the solids handling and treatment system of the Plant;
- i. Correct any conditions that the Service determines pose a safety or health risk to employees of the Service;
- j. Immediately begin assessing the adequacy of both the number and qualifications of Plant staff in order to provide a recommendation to Baltimore City and the Department on the adequate number of qualified operating staff that are necessary to carry out the operations, maintenance, and testing functions required to ensure compliance with the Back River Discharge Permit; and
- k. Identifying and implementing all necessary and appropriate alterations to the Back River WWTP and its operations and maintenance, including, if

necessary, the retaining of additional workers to temporarily supplement staffing at the Back River WWTP.

13. Notwithstanding the obligations of Baltimore City pursuant to § 3-109 of the Natural Resources Article, the Consent Order, and the Reimbursement Agreement to reimburse MES for costs incurred under the Consent Order, the original directive, and the Revised Directive, MES shall not begin any projects necessary to abate pollution: (1) that would alter the Plant's treatment system in such a significant manner that it would require a new construction permit under Title 9 of the Environment Article, or Code of Maryland Regulations 26.03.12; or (2) requiring repairs or alteration of the new headworks facility at the Plant.

14. The Secretary further DIRECTS the Service to abide by any amendments or modifications to this Revised Directive issued by the Secretary of Environment if the Secretary believes any such amendment or modification is necessary to protect human and environmental health.

15. The Secretary further DIRECTS the Service to seek recoupment of all its costs incurred in carrying out the original directive and this Revised Directive, as provided in § 3-109 of the Natural Resources Article and agreed in the Consent Order and the Reimbursement Agreement. The Service may record and index one or more liens against Baltimore City, and any other responsible parties, assigns, owners, or operators, and may take any other actions authorized by law to collect from Baltimore City all amounts due to the Service.

16. The Secretary further DIRECTS that this Revised Directive supersedes any prior directive issued to the Service with respect to the Back River WWTP; issuance of this Revised Directive serves as notice to the Service that any such prior directive is terminated.

17. The Secretary further DIRECTS the Service to complete all tasks in this Revised Directive until the Secretary notifies the Service that this Revised Directive is terminated.

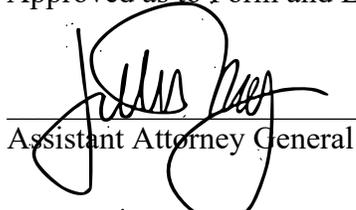
STATE OF MARYLAND,
DEPARTMENT OF THE ENVIRONMENT



Horacio Tablada, Secretary

Date 6/10/2022

Approved as to Form and Legal Sufficiency:



Assistant Attorney General

Date: 6/10/22