

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

**\* WATER AND SCIENCE  
\* ADMINISTRATION**

**v.**

**\* MDE Case No. SA-**

**MAYOR AND CITY COUNCIL  
OF BALTIMORE, MARYLAND  
Abel Wolman Municipal Building  
200 N. Holliday Street  
Baltimore, MD 21202**

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**SETTLEMENT AGREEMENT**

This Settlement Agreement (Agreement) is entered into by and between the State of Maryland, Department of the Environment (Department) and Mayor and City Council of Baltimore, Maryland (Baltimore) in resolution of violations of Title 9 of the Environment Article, Annotated Code of Maryland (Title 9) and the Code of Maryland Regulations (COMAR) 26.08.04 alleged by the Department against Baltimore.

**WHEREAS**, 33 U.S.C. § 1342(a) of the Clean Water Act requires a person to hold a National Pollutant Discharge Elimination System (NPDES) discharge permit before discharging any pollutant into navigable waters;

**WHEREAS**, under § 1-301 and §§ 9-301 through 9-344 of the Environment Article, the Department has the powers, duties, and responsibilities to implement and enforce the environmental laws of the State, including protection of the waters of the State;

**WHEREAS**, under § 9-101(1) of the Environment Article, “waters of the State” include both surface and underground waters and under § 9-101(b)(2) of the Environment Article, “discharge” includes the placement of a pollutant where it is likely to pollute waters of the State;

**WHEREAS**, § 9-322 and § 9-323 of the Environment Article prohibit the discharge of any pollutant into waters of the State unless unauthorized by a discharge permit issued by the Department;

**WHEREAS**, § 9-323 and § 9-324 authorize the Department to issue permits to persons authorizing the discharge of pollutants, but only in compliance with State water quality standards, effluent limitations, and any conditions the Department considers necessary to prevent water pollution;

**WHEREAS**, on April 29, 2013, MDE issued a letter to Baltimore acknowledging receipt of Baltimore's Notice of Intent and granting Baltimore coverage under General Discharge Permit No. 11-HT, NPDES Permit No. MDG67, effective April 29, 2013, for its potable water system;

**WHEREAS**, Baltimore registration number under General Discharge Permit No. 11-HT was identified as Registration Number 11-HT-2829 (Permit 11-HT-2829);

**WHEREAS**, Permit 11-HT-2829's terms and conditions and authorized permit registrations are automatically continued and remain fully effective and enforceable until the date specified under reissued Permit-17-HT mentioned below unless the permit or authorization is revoked or terminated by the Department;

**WHEREAS**, Permit 11-HT-2829 authorizes discharges to various streams in Baltimore City and County, for multiple Use I, II, III and IV waters for a potable water system (including mechanical cleaning) using chlorine as a disinfecting agent;

**WHEREAS**, on September 7, 2019, a water main running under the Ingleside Avenue Bridge in Gwynn Oak, Maryland (Site) failed, which is under the jurisdiction of the City of Baltimore;

**WHEREAS**, the water main break at the Site resulted in the direct discharge of potable water into Dead Run, a water of the State;

**WHEREAS**, Baltimore is required to chlorinate the water in its potable water system in order to comply with the Safe Drinking Water Act, 42 U.S.C §§ 300f through 300j-27, and protect the health of its customers. 40 CFR 141 establishes standards for disinfectant concentrations in public water systems, and 40 CFR 141.72(b)(2) specifically prohibits public water systems from sending water into the distribution system with a chlorine residual concentration less than 0.2 mg/l for more than 4 hours;

**WHEREAS**, Permit 11-HT-2829 was effective for the duration of the water main break discharge;

**WHEREAS**, 11-HT-2829 Part VII.N prohibits discharges that exceed numerical water quality criteria set forth in COMAR 26.08.02.03;

**WHEREAS**, COMAR 26.08.02.03-2.G establishes a maximum acute concentration for chlorine at 0.019 mg/l for freshwater waterbodies;

**WHEREAS**, the parties recognize that direct discharges from a potable water system to water of the State due to a water main break will likely violate State water quality standards and thus, the terms of 11-HT-2829;

**WHEREAS**, the Department alleges that Baltimore violated Title 9 and COMAR 26.08.04 by failing to comply with certain provisions of its Permit HT-2829 for unauthorized discharges of chlorinated water to Dead Run, a water of the State, causing a fish kill, which such illegal discharges were observed by MDE on September 9, 2019, September 10, 2019 and September 11, 2019 (Alleged Violations);

**WHEREAS**, during the September 9, 2019 inspection by MDE, an MDE inspector observed cloudy blue coloration and a chlorine odor throughout the area of the stream adjacent to the bridge and downstream for more than 200 feet and collected chlorine samples at the Site;

**WHEREAS**, on September 9, 2019, a Department inspector conducted a fish kill investigation and observed that an estimated 1,946 fish were killed suspected to be caused by chlorine in the discharged City water;

**WHEREAS**, during the September 10, 2019 and September 11, 2019 inspections by MDE, an MDE inspector observed a chlorine odor throughout the area of the stream adjacent to the bridge and collected chlorine samples during the September 10, 2019 inspection at the Site;

**WHEREAS**, on September 13, 2019, MDE conducted an inspection and observed that the discharge ceased;

**WHEREAS**, Baltimore asserts that it acted diligently to repair the water main, but had to address a number of complexities when eliminating the discharge; and

**WHEREAS**, the parties desire to settle the Department's claims against Baltimore for the Alleged Violations described in this Agreement without the expense and inconvenience of litigation and agree that such settlement is in the best interest of the parties and in the public interest.

**NOW THEREFORE**, in consideration of the foregoing and the mutual agreements set forth herein, the parties agree to the following:

### **CIVIL PENALTY**

1. Baltimore agrees to pay a civil penalty of **Twelve Thousand Dollars (\$12,000)** to the Department to fully resolve the Alleged Violations described in this Agreement. Payment of the \$12,000 penalty shall be made **within 30 days of execution of this Agreement**. The check or money order for the \$12,000 penalty shall be made payable to the "Maryland Clean Water Fund" and mailed to the following address: Maryland Department of the Environment, P.O. Box 1417, Baltimore, MD 21203-1417. The following must be noted on the check or on enclosed correspondence: *MDE v. City of Baltimore, Department of Public Works, PCA 13710, OBJ 7545, SFX 408 and GL 0544.*

2. The Department may submit an invoice to Baltimore notifying it of the penalty payment amount and due date. Baltimore has informed the Department to send the invoice to the following name and address: Matthew W. Garbark, Acting Director, City of Baltimore,

Department of Public Works, Abel Wolman Municipal Building, 6<sup>th</sup> Floor, 200 N. Holliday Street, Baltimore, MD 21202. The lack of receipt of an invoice has no effect on Baltimore's obligation to make timely penalty payment to the Department.

3. Baltimore acknowledges that payment of the penalty under this Agreement constitutes a penalty arising from a State enforcement action and is for the benefit of a government unit. Pursuant to 11 U.S.C. § 523(a)(7), a penalty is not dischargeable in any bankruptcy proceeding.

### **EFFECT OF AGREEMENT**

4. This Agreement is neither an admission of liability nor a concession by Baltimore. This Agreement is not a concession by the Department that the Alleged Violations described in this Agreement are not well founded.

5. Other than the Department's release in paragraph 8 of this Agreement, nothing in this Agreement shall be construed to limit any authority of the Department to issue orders, enforce applicable permits or licenses, or to take any other act permitted under applicable law that it deems necessary to protect the public health or safety, or to limit any other authority the Department now has or may hereafter be delegated.

6. Nothing in this Agreement shall be construed to alter Baltimore's obligation to comply with all applicable federal, State, or local statutes, regulations, permits, or licenses.

### **RELEASE AND RESERVATION OF RIGHTS**

7. Subject to Baltimore's payment of \$12,000 penalty to the Department in accordance with paragraph 1 of this Agreement, the Department will refrain from pursuing any civil enforcement action for the Alleged Violations described in this Agreement, which could have been brought against Baltimore prior to the execution of this Agreement.

8. The Department specifically reserves, and this Agreement is without prejudice to, all rights against Baltimore with respect to (a) criminal enforcement actions; or (b) violations of any other State law not alleged herein.

9. Baltimore and the Department intend that nothing in this Agreement shall be construed as a release or covenant not to sue any third party not a signatory to this Agreement. Nothing contained in this Agreement shall affect any right, claim, cause of action, or defense of any party hereto with respect to third parties. Baltimore and the Department specifically reserve all rights, defense, claims, demands, and causes of action, which Baltimore and the Department may have against any third parties relating in any way to the subject matter of this Agreement.

## **NO THIRD PARTY BENEFICIARIES**

10. This Agreement does not and is not intended to create any rights, claims, or benefits for any third party. No third party shall have any legally enforceable rights, claims, or benefits under this Agreement, nor shall any third party have any rights to enforce the terms of this Agreement. No act or performance by Baltimore or the Department, nor forbearance to enforce any term of this Agreement by the Department shall be construed as creating any rights, claims, or benefits for any third party.

11. This Agreement does not affect and is not intended to influence any third party's rights to investigate, evaluate and respond independently to any impacts from the Alleged Violations herein.

## **GENERAL PROVISIONS**

12. Fair Meaning. This Agreement has been negotiated freely by Baltimore and the Department and shall in all cases be construed as a whole, according to its fair meaning.

13. Authority to Sign. Each person signing this Agreement certifies that he or she is duly authorized by the party on behalf of which each sign to execute this Agreement.

14. Persons Bound by Agreement. This Agreement shall apply to and be binding upon the Department, Baltimore and Baltimore's respective agents, employees, successors and assigns.

15. Entire Agreement. This Agreement contains the entire agreement of the Parties settling the Alleged Violations herein. No other prior or contemporaneous written or oral agreement, action, or statement regarding the matters described herein shall be valid or have any bearing on the interpretation, application, or enforcement of this Agreement.

16. Modification. This Agreement may not be modified except by written agreement by the Department and Baltimore.

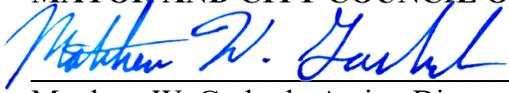
17. Severability. If any provision or authority of this Agreement or the application of the Agreement to any party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision or authority to other parties or circumstances and the remainder of the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

18. Governing Law and Enforceability. This Agreement shall be governed by and interpreted under the laws of the State of Maryland. Baltimore agrees that this Agreement is both a contract and a final administrative order enforceable in a judicial forum.

19. Effective Date. This Agreement shall be deemed effective as of the date the last Party signs this Agreement.

**IT IS SO AGREED AND CONSENTED TO:**

**MAYOR AND CITY COUNCIL OF BALTIMORE, MARYLAND**



Matthew W. Garbark, Acting Director  
Department of Public Works

12/1/2020

Date

Approved for form and legal Sufficiency:



Chief City Solicitor

**MARYLAND DEPARTMENT OF  
THE ENVIRONMENT**

\_\_\_\_\_  
D. Lee Currey, Director  
Water and Science Administration

\_\_\_\_\_  
Date

*Approved as to form and legal sufficiency this*  
                     day of                      2020.

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*Ellen W. Cohill*  
*Assistant Attorney General*  
11.24.20