

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD  
CHARLESTON, WEST VIRGINIA

RECEIVED  
DEC 4 2025

Environmental Quality  
Board

CLARKSBURG SANITARY BOARD,

Appellant,

Appeal No. 25-06-EQB

**DIRECTOR, DIVISION OF  
WATER AND WASTE MANAGEMENT,  
WEST VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,**

Appellee.

**WVDEP'S RESPONSE TO APPELLANT'S MOTION FOR SUMMARY JUDGMENT**

Comes now the Appellee, Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection (“WVDEP”), by counsel, and requests that the Board deny the Appellant’s Motion for Summary Judgment as set forth below.

**INTRODUCTION**

Appellant has filed the above-styled appeal challenging the language contained in Section F.3.a of West Virginia/National Pollutant Discharge Elimination System (“NPDES”) Permit No. WV0023302 (“Permit”) which was reissued to Appellant on April 29, 2025. Section F of the Permit regulates Appellant’s Combined Sewer System Overflows (“CSOs”). Specifically, Section F.3.a. of the Permit states as follows:

3.a. To the extent provided by law, the discharges from the permittee’s CSOs shall not cause or contribute to an in-stream excursion above any numeric or narrative criteria developed and adopted as part of the WV water quality standards.

Appellant has requested that this Board order the WVDEP to remove Section F.3.a. from the Permit and cites the decision in *City and County of San Francisco, California v. Environmental Protection Agency*, 145 S. Ct. 704 (2025) as a basis for the removal. However, the language at issue was developed to primarily address with fecal coliform, which is the pollutant of concern with CSO discharges, and removal of the language without alternative numeric or narrative permit limits to address fecal coliform is contrary to requirements established in both federal law pursuant to the Clean Water Act (“CWA”), Title 33 §1342, and state law pursuant to 47 CSR 10, that mandate issuance of permits that are protective of water quality standards.

## ARGUMENT

**I. Removal of Section of F.3.a. of the Permit without implementation of alternate numeric or narrative language will result in a permit that is not protective of water quality standards and thus, contrary to the requirements of the federal Clean Water Act (“CWA”)**

Appellant’s Permit allows it to operate and maintain a combined wastewater treatment system. The State of West Virginia has adopted water quality criteria for fecal coliform which is set forth in 47 CSR 2, Appendix E, Table 1, Section 8.13 and holds as follows:

**8.13 Fecal Coliform:**

Maximum allowable level of fecal coliform content for Water Contact Recreation (Either MPN or MF) shall not exceed 200/100 ml as a monthly geometric mean based on not less than 5 samples per month; nor to exceed 400/100 ml in more than ten percent of all samples taken during the month.

*See Attachment A.*

While Appellant attempts to oversimplify the WVDEP’s assertion made in the agency’s response to Appellant’s comment that the language was developed many years ago, their articulation falls short of the point that the WVDEP makes. The language currently contained in Section F.3.a. was previously developed in 2006 with involvement from the USEPA and the

Municipal Water Quality Association as an alternative approach to address fecal coliform in this and other permits controlling CSO discharges rather than including the specific numeric criteria, given the recognized difficulties in implementing CSO controls in a cost-effective manner. Those difficulties have previously been recognized by the United States Environmental Protection Agency (“EPA”) and have resulted in guidance being developed by the EPA in an effort to expedite compliance with requirements of the CWA by entities that regulate CSO discharges.

The EPA developed a CSO Control Policy (“CSO Policy”) in 1994. The CSO Policy contemplates a two-phase approach to determine compliance with water quality standards. Phase I requires facilities to implement the nine minimum controls (technology-based requirements), develop a Long Term Control Plan (“LTCP”), and submit the LTCP for ultimate approval and adoption into the NPDES permit. Phase II requires facilities to continue to implement the nine minimum controls, implement the LTCP, and conduct monitoring, known as post-construction monitoring, to verify water quality standards are being met.

As part of a LTCP, a facility will select a performance standard which it believes will ultimately meet water quality standards. These performance standards can consist of either a presumptive approach or a demonstrative approach. Regardless of the performance standard selected, the facility must conduct post-construction monitoring to ensure that the selected performance standard meets water quality standards. An excerpt of the CSO Policy states as follows:

*State water quality standards authorities will be involved in the long-term CSO control planning effort as well. The water quality standards authorities will help ensure that development of the CSO permittees’ long-term CSO control plans are coordinated with the review and possible revision of water quality standards on CSO-impacted waters.*

*NPDES authorities will issue/reissue or modify permits, as appropriate, to require compliance with the technology-based and water quality-based requirements of the CWA. After completion of the long-term CSO control plan, NPDES permits will be reissued or modified to incorporate the additional requirements specified in the Policy, such as performance standards for the selected controls based on average design conditions, a post-construction water quality assessment program, monitoring for compliance with water quality standards, and a reopen clause authorizing the NPDES authority to reopen and modify the permit if it is determined that the CSO controls fail to meet water quality standards or protect designated uses.*

*See Attachment B, cited portion highlighted.*

Although concepts of wet-weather or site-specific water quality criteria are contemplated in the EPA's CSO Policy, West Virginia has no such provision in its water quality standards. Therefore, CSO discharges must ultimately meet water quality-based effluent limitations that are protective of the fecal coliform water quality criteria set forth in 47 CSR 2-8.13 to ensure protection of water quality standards.

Appellant submitted a LTCP in January 2010 which was subsequently approved and was most recently modified on May 9, 2023. Appellants have chosen the presumptive approach to ultimately achieve water quality standards. As part of the nine minimum controls, the following language as it relates to monitoring the CSO for impact is included:

9) Monitoring to characterize CSO impacts – The two (2) representative CSOs have been sampled and analyzed as required in the NPDES Permit at the beginning of this new permit period and will be sampled again prior to renewal of the permit in five (5) years. All CSOs are monitored for discharge quantity during overflow events.

*See Attachment C.*

While the LTCP was previously approved by the WVDEP, this was done in conjunction with the language set forth in Section F.3.a. being present in the Permit, albeit in a previous version of the permit. Without the language in Section F.3.a. being in the Permit, this monitoring frequency may have undergone a different evaluation to ensure that the requirements were being met.

In addition to the issuance of the Permit, the WVDEP issued Administrative Order 8260, which has subsequently been amended, to afford relief to Appellant from the requirement in Section F.3.a. while the LTCP is being implemented. *See* Attachment D. The purpose of such an administrative order is to recognize that addressing CSOs is a difficult and time-consuming issue for the facilities.

However, this does not relieve the WVDEP from its obligation to issue a permit that contains limits for any discharge that has reasonable potential to exceed water quality criteria for a pollutant, as set forth in the CWA and state regulations. CSO discharges are not exempt from this requirement. Therefore, the WVDEP must include limits in the permit for fecal coliform and because the language in Section F.3.a. is intended to address fecal coliform, removal of that language leaves in place a permit that fails to address that pollutant.

It should be noted that 47 CSR 10-8.1.a. holds that, “[a]ny schedule of compliance shall require compliance as soon as possible, but in no case later than an applicable statutory deadline. In the case of permit conditions based on water quality standards established after July 1, 1977, a schedule of compliance may be used that shall assure that the discharge will not cause a violation of applicable water quality standards.” However, the water quality criteria for fecal coliform was adopted in West Virginia in 1974 and thus, a compliance schedule cannot be granted in a permit for that pollutant and thus, the Permit must contain limits for fecal coliform.

## CONCLUSION

For the reasons stated above, the WVDEP requests that the Board deny Appellant's motion for summary judgment and decline their request for Board to order the WVDEP to remove the Permit language in Section F.3.a. without implementing alternate numeric or narrative language to address fecal coliform, as required by applicable law.

Respectfully submitted this 4<sup>th</sup> day of December, 2025.

**Director, Division of Water and Waste  
Management, Department of  
Environmental Protection**

By Counsel



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Isaac L. Tincher, WV Bar ID #14495  
Jon C. Frame, WV Bar ID #10182  
WV Department of Environmental  
Protection, Office of Legal Services  
601 57<sup>th</sup> Street, S.E.  
Charleston, WV 25304  
(304) 926-0460

WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD  
CHARLESTON, WEST VIRGINIA

CLARKSBURG SANITARY BOARD,

Appellant,

Appeal No. 25-06-EQB

DIRECTOR, DIVISION OF  
WATER AND WASTE MANAGEMENT,  
WEST VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,

Appellee.

**CERTIFICATE OF SERVICE**

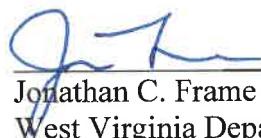
I, Jonathan C. Frame, do hereby certify that service of the foregoing **WVDEP'S  
RESPONSE TO APPELLANT'S MOTION FOR SUMMARY JUGMENT** has been made  
this 4<sup>th</sup> day of December, 2025, via U.S. mail and/or electronic service, postage prepaid, to the  
following:

Kenna M. DeRaimo, Clerk  
West Virginia Environmental Quality Board  
601 57<sup>th</sup> Street, SE  
Charleston, West Virginia 25304

*Via Hand Deliver and Electronic  
Mail*

Marc C. Bryson, Esq.  
Marissa G. Nortz, Esq.  
STEPTOE & JOHNSON PLLC  
707 Virginia Street, East  
Charleston, WV 25301

*Via U.S. and Electronic Mail*

  
\_\_\_\_\_  
Jonathan C. Frame (WVSB 10182)  
West Virginia Department of  
Environmental Protection,  
Office of Legal Services  
601 57th St. SE  
Charleston, WV 25304  
Phone: 304-926-0499

## **ATTACHMENT A**

47CSR2  
APPENDIX E, TABLE 1

PARAMETER	USE DESIGNATION							
	AQUATIC LIFE				HUMAN HEALTH		ALL OTHER USES	
	B1, B4		B2		C <sup>3</sup>	A <sup>4</sup>		
	ACUTE <sup>1</sup>	CHRON <sup>2</sup>	ACUTE <sup>1</sup>	CHRON <sup>2</sup>				
8.13 Fecal Coliform: Maximum allowable level of fecal coliform content for Water Contact Recreation (either MPN or MF) shall not exceed 200/100 ml as a monthly geometric mean based on not less than 5 samples per month; nor to exceed 400/100 ml in more than ten percent of all samples taken during the month.					X	X		
8.13.1 Ohio River main stem (zone 1) - During the non-recreational season (November through April only) the maximum allowable level of fecal coliform for the Ohio River (either MPN or MF) shall not exceed 2000/100 ml as a monthly geometric mean based on not less than 5 samples per month.					X	X		
8.14 Fluoride (mg/l)						1.4		
8.14.1 Not to exceed 2.0 for category D1 uses.							X	
8.15 Iron <sup>c</sup> (mg/l)		1.5		0.5		1.5		
8.16 Lead (ug/l)						50		
8.16.1 The four-day average concentration of dissolved lead determined by the following equation <sup>a</sup> : $Pb = e^{(1.273[\ln(\text{hardness})] - 4.705)} \times CF^5$		X		X				

## **ATTACHMENT B**

U.S. Environmental Protection Agency  
Proposed Rule  
Combined Sewer Overflow (CSO) Control  
Policy; Notice

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Tuesday  
April 19, 1994

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**Part VII**

**Environmental  
Protection Agency**

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Combined Sewer Overflow (CSO) Control  
Policy; Notice

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4732-7]

## Combined Sewer Overflow (CSO) Control Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final policy.

**SUMMARY:** EPA has issued a national policy statement entitled "Combined Sewer Overflow (CSO) Control Policy." This policy establishes a consistent national approach for controlling discharges from CSOs to the Nation's waters through the National Pollutant Discharge Elimination System (NPDES) permit program.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Lape, Office of Wastewater Enforcement and Compliance, MC-4201, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-7361.

**SUPPLEMENTARY INFORMATION:** The main purposes of the CSO Control Policy are to elaborate on the Environmental Protection Agency's (EPA's) National CSO Control Strategy published on September 8, 1989, at 54 FR 37370, and to expedite compliance with the requirements of the Clean Water Act (CWA). While implementation of the 1989 Strategy has resulted in progress toward controlling CSOs, significant public health and water quality risks remain.

This Policy provides guidance to permittees with CSOs, NPDES authorities and State water quality standards authorities on coordinating the planning, selection, and implementation of CSO controls that meet the requirements of the CWA and allow for public involvement during the decision-making process.

Contained in the Policy are provisions for developing appropriate, site-specific NPDES permit requirements for all combined sewer systems (CSS) that overflow as a result of wet weather events. For example, the Policy lays out two alternative approaches—the "demonstration" and the "presumption" approaches—that provide communities with targets for CSO controls that achieve compliance with the Act, particularly protection of water quality and designated uses. The Policy also includes enforcement initiatives to require the immediate elimination of overflows that occur during dry weather and to ensure that the remaining CWA requirements are complied with as soon as practicable.

The permitting provisions of the Policy were developed as a result of

extensive input received from key stakeholders during a negotiated policy dialogue. The CSO stakeholders included representatives from States, environmental groups, municipal organizations and others. The negotiated dialogue was conducted during the Summer of 1992 by the Office of Water and the Office of Water's Management Advisory Group. The enforcement initiatives, including one which is underway to address CSOs during dry weather, were developed by EPA's Office of Water and Office of Enforcement.

EPA issued a Notice of Availability on the draft CSO Control Policy on January 19, 1993, (58 FR 4994) and requested comments on the draft Policy by March 22, 1993. Approximately forty-one sets of written comments were submitted by a variety of interest groups including cities and municipal groups, environmental groups, States, professional organizations and others. All comments were considered as EPA prepared the Final Policy. The public comments were largely supportive of the draft Policy. EPA received broad endorsement of and support for the key principles and provisions from most commenters. Thus, this final Policy does not include significant changes to the major provisions of the draft Policy, but rather, it includes clarification and better explanation of the elements of the Policy to address several of the questions that were raised in the comments. Persons wishing to obtain copies of the public comments or EPA's summary analysis of the comments may write or call the EPA contact person.

The CSO Policy represents a comprehensive national strategy to ensure that municipalities, permitting authorities, water quality standards authorities and the public engage in a comprehensive and coordinated planning effort to achieve cost effective CSO controls that ultimately meet appropriate health and environmental objectives. The Policy recognizes the site-specific nature of CSOs and their impacts and provides the necessary flexibility to tailor controls to local situations. Major elements of the Policy ensure that CSO controls are cost effective and meet the objectives and requirements of the CWA.

The major provisions of the Policy are as follows.

CSO permittees should immediately undertake a process to accurately characterize their CSS and CSO discharges, demonstrate implementation of minimum technology-based controls identified in the Policy, and develop long-term CSO control plans which evaluate alternatives for attaining

compliance with the CWA, including compliance with water quality standards and protection of designated uses. Once the long-term CSO control plans are completed, permittees will be responsible to implement the plans' recommendations as soon as practicable.

State water quality standards authorities will be involved in the long-term CSO control planning effort as well. The water quality standards authorities will help ensure that development of the CSO permittees' long-term CSO control plans are coordinated with the review and possible revision of water quality standards on CSO-impacted waters.

NPDES authorities will issue/reissue or modify permits, as appropriate, to require compliance with the technology-based and water quality-based requirements of the CWA. After completion of the long-term CSO control plan, NPDES permits will be revised or modified to incorporate the additional requirements specified in the Policy, such as performance standards for the selected controls based on average design conditions, a post-construction water quality assessment program, monitoring for compliance with water quality standards, and a reopen clause authorizing the NPDES authority to reopen and modify the permit if it is determined that the CSO controls fail to meet water quality standards or protect designated uses. NPDES authorities should commence enforcement actions against permittees that have CWA violations due to CSO discharges during dry weather. In addition, NPDES authorities should ensure the implementation of the minimum technology-based controls and incorporate a schedule into an appropriate enforceable mechanism, with appropriate milestone dates, to implement the required long-term CSO control plan. Schedules for implementation of the long-term CSO control plan may be phased based on the relative importance of adverse impacts upon water quality standards and designated uses, and on a permittee's financial capability.

EPA is developing extensive guidance to support the Policy and will announce the availability of the guidances and other outreach efforts through various means, as they become available. For example, EPA is preparing guidance on the nine minimum controls, characterization and monitoring of CSOs, development of long-term CSO control plans, and financial capability. Permittees will be expected to comply with any existing CSO-related requirements in NPDES permits.

## **ATTACHMENT C**

**CITY OF CLARKSBURG  
HARRISON COUNTY, WEST VIRGINIA**

**LONG TERM CONTROL PLAN**



**JANUARY 2010**



## CSO Summary Report

**CSO Community:** City of Clarksburg  
**Reporting Period:** Semi-annual (January - June)  
**Prepared By:** Terry Bell  
**Date Submitted:** July 14, 2006

1/06 - 6/06

### Comments on Nine Minimum Controls activity during the past reporting period

- 1) **O&M Plan** – The two (2) employees at the treatment plant are continuing with the daily inspections of the collection system as well as the monthly thorough inspection with a summary report generated and distributed to the various responsible departments. New problems are reported to the sewer department and corrective actions are taken as soon as possible.
- 2) **Maximize storage in collection system** – The main pump station is operated at the lowest possible level in order to maintain maximum storage capacity in the collection system should a rain event occur.
- 3) **Review and modification of pretreatment requirements** – No non-domestic discharger has the ability to store their wastewater.
- 4) **Maximization of flow to POTW for treatment** – The POTW is currently being operated at maximum capacity during wet weather flows.
- 5) **Elimination of CSO dry weather events** – The main interceptor is inspected daily for any type of discharge. All dry weather discharges are reported to the Spill Alert Line, are logged, and are repaired as soon as possible by the sewer department. Follow up letters are mailed to the DEP.
- 6) **Control of solids and floatable materials** – A street cleaning and catch basin cleaning program is in effect. These measures are being implemented to control solids and floatables in the CSO's.
- 7) **Pollution prevention** – Inspections of establishments that could discharge grease and oils has begun to insure that they have taken the necessary measures to control the discharge of grease and oils.
- 8) **Public notification** – Please see attachment.
- 9) **Monitoring to characterize CSO impacts** - The two (2) representative CSO's have been sampled and analyzed as required in the NPDES Permit at the beginning of this new permit period and will be sampled again prior to renewal of the permit in five (5) years. All CSO's are monitored for discharge quantity during overflow events.

### Wet Weather Events

10) **Number of CSO wet weather events that occurred during the last reporting period** - There were a total of one hundred fifty two (152) wet weather events that occurred during the first six (6) months of 2006. From January thru June.

11) **Estimated duration of CSO discharge (gallons or time)** – 175,255,282 total gallons was discharged during wet weather events during the first six (6) months of 2006.

12) **Number of CSO wet weather events YTD** – Year to Date total is one hundred

12 Events - See *email*

## **ATTACHMENT D**



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**west virginia department of environmental protection**

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: (304) 926-0495  
Fax: (304) 926-0463

Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
dep.wv.gov

**CERTIFIED RETURN RECEIPT REQUESTED**

**ORDER NO.:** 8260

**DATE:** May 19, 2015

**TO:** City of Clarksburg  
Sanitary Board  
222 West Main Street  
Clarksburg, WV 26301

**RE:** WV/NPDES Water Pollution Control Permit No. WV0023302

The following FINDINGS are made and ORDER issued pursuant to the authority vested in the Director of the Division of Water and Waste Management under Chapter 22, Article 11 of the Code of West Virginia.

**FINDINGS OF FACT**

1. The City of Clarksburg owns and operates an existing combined wastewater collection and treatment system that discharges pollutants into the waters of the State.
2. The City of Clarksburg was issued WV/NPDES Permit No. WV0023302, on the 19<sup>th</sup> day of May 2015, for the operation and maintenance of the existing 8.0 million gallons per day wastewater collection and treatment system, and the discharge of treated wastewater from said system.
3. The wastewater collection system operated by the City of Clarksburg is a combined sewer system and contains within this system 56 combined sewer overflow (CSO) relief points which discharge untreated sewage and contaminated storm water during wet weather events when flows exceed the conveyance and/or treatment capacity of the collection system.

4. USEPA issued a National Combined Sewer Overflow Control Strategy on August 10, 1989 (54 Federal Register 37370). This Strategy reaffirmed that CSOs are point sources subject to National Pollutant Discharge Elimination System (NPDES) permit requirements and to Clean Water Act requirements. The CSO Strategy recommended that all CSOs be identified and categorized according to their status of compliance with these requirements. In addition, the CSO Strategy charged all States with developing statewide permitting strategies designed to reduce, eliminate, or control CSOs.
5. In mid-1991 USEPA initiated a process to accelerate implementation of the CSO Control Strategy. The initiative resulted in the development of the CSO Control Policy that was issued on April 19, 1994 (59 Federal Register 18688). The CSO Control Policy contains provisions for developing appropriate, site-specific NPDES permit requirements for all Combined Sewer Systems that overflow due to wet weather events. It also announces an enforcement initiative that requires the immediate elimination of overflows that occur during dry weather and ensures that the remaining Clean Water Act requirements are complied with as soon as possible.
6. The CSO Control Policy requires the development and implementation of a Long-Term Control Plan (LTCP) that will provide a range of CSO control alternatives that will be sufficient to provide for the attainment of water quality standards, including designated uses of CSO-impacted receiving streams.
7. The LTCP requires an engineering analysis to determine the costs of the various CSO control options and portray those options in the framework of affordability for the community and also stand-alone cost effectiveness in order to determine the costs that are reasonable to incur.
8. The City of Clarksburg submitted a CSO LTCP, and the Division completed its review and approval on February 19, 2003.
9. Administrative Order No. 5709, was issued on May 5, 2005 requiring the City of Clarksburg to submit revisions to the approved LTCP resultant to the US EPA's interpretation of the CSO Control Policy and the necessary provisions that needed to be contained in an LTCP.
10. The City of Clarksburg then used the most current guidance and reached agreement on how to proceed and determine what specific additional information submission may be necessary. As a result, a revised LTCP was submitted to the agency on December 13, 2007, which also included a proposed implementation schedule. The agency approved the revised LTCP on April 29, 2010.

City of Clarksburg  
Order No. 8260  
Page 3  
May 19, 2015

11. The CSO Control Policy provides streamlined requirements for small CSO systems, defined as those serving 75,000 people or less. The City of Clarksburg qualifies as a small CSO system.
12. The Wet Weather Water Quality Act of 2000 dated December 15, 2000 requires that all permits, orders, and decrees issued for a discharge from a municipal combined storm and sanitary sewer shall conform to the CSO Control Policy issued on April 19, 1994.
13. The receiving streams, West Fork River and Elk Creek had TMDLs developed, in July 2014, for aluminum, iron, pH, chloride, and fecal coliform bacteria. The 2014 EPA approved TMDL specifies wasteload allocations of 200 counts per 100 milliliters for fecal coliform for the CSO outlets. As such, the permittee must implement procedures in its LTCP to afford compliance with the wasteload allocations prescribed by the TMDL.
14. Because the City of Clarksburg's compliance with Section F.3 of WV/NPDES Permit No. WV0023302, issued on the 19<sup>th</sup> day of May 2015, is uncertain this ORDER requires the City of Clarksburg to:

## **ORDER FOR COMPLIANCE**

1. The City of Clarksburg shall continue to implement its approved Nine (9) Minimum Controls Program, including the public notice and reporting requirements relating to CSO events.
2. This Order shall supersede Order No. 5709, issued May 5, 2005, along with Amendment No. 1, issued April 29, 2010, Amendment No. 2, issued March 18, 2011, and Amendment No 3, issued December 2, 2013.
3. The implementation schedule contained in the approved LTCP shall, hereby, become an enforceable term and condition of this ORDER. Additionally, this ORDER shall be amended, as necessary, to include the mechanisms necessary to implement the requirements of the CSO Control Policy.
4. The City of Clarksburg shall implement and effectively operate and maintain all current CSO control measures and any completed CSO abatement projects in accordance with the revised LTCP as approved by the Division.
5. The City of Clarksburg shall develop and submit a post-construction compliance monitoring plan that is adequate to ascertain the effectiveness of the CSO controls and that can be used

5. (Continued)

to verify attainment of water quality standards. The plan shall include details of monitoring protocols to be followed including CSO and ambient monitoring. The post-construction compliance-monitoring plan may be developed as a part of the LTCP revised information submittal of Order for Compliance, Section 4, as specified above.

6. The approved LTCP becomes an integral part of this Order. The Implementation Schedule included in the LTCP shall become a part of this Order and is found in "Attachment A" of this Order. The permittee shall adhere to this Implementation Schedule.
7. The City of Clarksburg recognizes that the CSO Outlets discharges are required to achieve any wasteload prescribed upon it by the Environmental Protection Agency (EPA) approved TMDL. The City of Clarksburg may need to revise its LTCP to identify CSO receiving streams with a complete TMDL for fecal coliform and to further recognize those specific CSOs affected by the TMDL and the associated wasteload allocations prescribes by the TMDL. The City shall submit a singular, complete, stand-alone final copy of its amended LTCP including the implementation schedule no later than the 18<sup>th</sup> day of May 2016.
8. The City of Clarksburg shall be required every year to make requests to known funding agencies including the Infrastructure and Jobs Development Council, the Small Cities Block Grants, Appalachian Regional Commission, Rural Utilities Service, Corp of Engineers, and Congressional STAG Appropriations, for monies to construct CSO abatement projects during the term of this ORDER. Documentation of these funding requests shall be submitted to the Division as a part of the required quarterly CSO progress reports.
9. The City of Clarksburg shall submit a LTCP Status Report as part of the semiannual CSO Summary Reports being currently provided.

Compliance with the terms and conditions of this ORDER shall not be construed to relieve the City of Clarksburg of the obligation to comply with the other terms and conditions of its WV/NPDES permit, or of any applicable Federal, State, or local law. Violation of this ORDER is a violation of the West Virginia State Code, Chapter 22, Article 11, and may result in further enforcement action as outlined in the Act.

This ORDER shall be effective 20 days from its receipt.

City of Clarksburg  
Order No. 8260  
Page 5  
May 19, 2015

**RIGHT OF APPEAL**

Notice is hereby given of your right to appeal the terms and conditions of this Order with which you are aggrieved to the Environmental Quality Board by filing a NOTICE OF APPEAL on the form prescribed by such Board, in accordance with the provisions of Sections 21, Article 11, Chapter 22 of the Code of West Virginia within thirty (30) days after receipt of this Order.

By: 

Scott G. Mandirola  
Acting Director

SGM/jdm

City of Clarksburg  
Administrative Order No. 8260  
May 19, 2015

Attachment A

**CSO Implementation Schedule**

**Phase I** - The permittee has completed the following items on or before December 31, 2009.

1. Replace an existing gravity sewer line in the Davisson Run area to Hill-N-Dale subdivision to eliminate the requirements of two (2) lift stations.
2. Installation of a storm sewer in Adamston to separate storm water from sanitary sewage.
3. Cleaning of approximately 3,400 LF of gravity sewer line to maximize flow to the WWTP.
4. Perform miscellaneous manhole rehabilitation work (removed and replaced 11 manholes).
5. The permittee shall continue to submit a brief summation of current LTCP activities in the semi-annual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.

**Phase II** - The permittee shall complete the following items on or before June 30, 2011

1. Implement a CSO discharge monitoring program by installing a minimum of two (2) flow meters and a minimum of four (4) flow detection probes in the most active CSOs.
2. In accordance with WVDEP NMC policy, establish and include in the City's CSO OMM, policies and procedures for documenting customer complaints (which will be available for public review), training for WWTP and Public Works personnel, maintaining an inventory of all critical CSO equipment, inspection and cleaning of all critical CSO equipment, reducing the occurrences of dry weather flows, controlling solids and floatable materials, and implementation of a pollution prevention program.
3. Develop and implement a public education and awareness program concerning the significance and impacts of CSO events.
4. Record and document public involvement concerning CSO operations.
5. The permittee shall continue to submit a brief summation of current LTCP activities in the semi-annual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.

**Phase III** – The permittee shall complete the following items on or before February 28, 2016.

1. Construct a screen building to house the fine bar screen, disinfection (chlorination/dechlorination or UV), construction of an additional primary clarifier, equipment and concrete channels, and all necessary site work, piping, electrical, and mechanical. The final WWTP upgrade components and configuration will be

City of Clarksburg  
Administrative Order No. 8260  
Attachment A  
May 19, 2015  
Page 2

**Phase III (Continued)**

**1. (Continued)**

1. determined during development of the facility plan, which is due to be completed during Phase II, by June 30, 2011.
2. Install a minimum of eight (8) flow meters and fifty-one (51) flow detection probes in the remaining CSO outfalls
3. Capital improvements shall include: (a) rebuild or replace three process air blowers, (b) dredge and close an existing ash lagoon, (c) purchase a new flusher, (d) purchase new backhoe, (e) rehabilitate approximately 500 L.F. of sewer line, and rehabilitate two (2) manholes.
4. The permittee shall continue to submit a brief summation of current LTCP activities in the semi-annual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.
5. Submit a post construction monitoring evaluation within twelve (12) months after completion of Phase III construction.

**Phase IV – The permittee shall complete the following items on or before December 31, 2018.**

1. Separate approximately 40,000 linear feet of pipe in all sub-sewershed areas except Downtown and Glen Elk. This work covers all CSOs except for the following: 004, 082, 006, 077, 020, 022, 028, 017, 030, 019, 021, 023, 025, 027, 033, 034, 036, and 045.
2. Capital improvements will include: (a) replace pump station bar screens, (b) clean out wet well, (c) replace all WWTP flow measuring equipment, (d) replace all aeration tank diffusers, (e) purchase two (2) new dump trucks, (f) purchase two (2) new crew trucks, (g) rehabilitate approximately 1,000 L.F. of sewer line, and rehabilitate six (6) manholes.
3. The permittee shall continue to submit a brief summation of current LTCP activities in the semi-annual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.
4. Submit a post construction monitoring evaluation within twelve (12) months after completion of Phase IV construction.

City of Clarksburg  
Administrative Order No. 8260  
Attachment A  
May 19, 2015  
Page 3

**Phase V** – The permittee shall complete the following items on or before December 31, 2024.

1. Should it become necessary in order to achieve water quality in the receiving stream during CSO discharges, the permittee shall install an 11 MG storage facility including associated piping, plumbing, and required aeration facilities. Storage facility location will be determined after completion of the Phase IV post construction monitoring evaluation.
2. Capital improvements will include: (a) install a new roof on the solids disposal building, (b) replace automatic composite samplers, (c) replace sludge thickener drive unit, (d) replace chlorinators and sulfurnators, (e) purchase a new flusher, (f) purchase a new backhoe, (g) rehabilitate 500 L.F. of sewer line, and (h) rehabilitate three (3) manholes.
3. The permittee shall continue to submit a brief summation of current LTCP activities in the semi-annual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.
4. Submit a post construction monitoring evaluation within twelve (12) months after completion of Phase V construction.

**Phase VI** – The permittee shall complete the following items on or before December 31, 2028.

1. Should it become necessary in order to achieve water quality in the receiving stream during CSO discharges, the permittee shall install an additional 11 MG storage facility including associated piping, plumbing, and required aeration facilities. Storage facility location will be determined after completion of the Phase V post construction monitoring evaluation.
2. Capital improvements will include: (a) replace sludge return pumps, (b) replace sludge collectors in final clarifiers, (c) install a new roof on the operations and the pump station buildings, and (d) purchase three (3) new dump trucks.
3. The permittee shall continue to submit a brief summation of current LTCP activities in the semi-annual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.
4. Submit a post construction monitoring evaluation within twelve (12) months after completion of Phase VI construction.

City of Clarksburg  
Administrative Order No. 8260  
Attachment A  
May 19, 2015  
Page 4

**Phase VII** – The permittee shall complete the following items on or before December 31, 2032.

1. Should it become necessary in order to achieve water quality in the receiving stream during CSO discharges, the permittee shall install an additional 11 MG storage facility including associated piping, plumbing, and required aeration facilities. Storage facility location will be determined after completion of the Phase VI post construction monitoring evaluation
2. Capital improvements will include: (a) replace belt press, and (b) as needed, replace miscellaneous laboratory equipment and replace valves and piping throughout the WWTP, (c) rehabilitate approximately 2,000 L.F. of sewer line, and (d) rehabilitate ten (10) manholes.
3. The permittee shall continue to submit a brief summation of current LTCP activities in the semi-annual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.
4. Submit a post construction monitoring evaluation within twelve (12) months after completion of Phase VII construction.

**Phase VIII** – The permittee shall complete the following items on or before December 31, 2036.

1. Should it become necessary in order to achieve water quality in the receiving streams during CSO discharges, the permittee shall complete the planning, selection, design and implementation of the CSO management practices and controls to meet the requirement of the Clean Water Act (CWA), the 1994 USEPA Combine Sewer Overflow (CSO) Control Policy and other USEPA guidance documents, and West Virginia's CSO Long-Term Control Plan Implementation Policy.
2. The permittee shall continue to submit a brief summation of current LTCP activities in the semi-annual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.
3. Submit a post construction monitoring evaluation within twelve (12) months after completion of Phase VIII construction.



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**west virginia department of environmental protection**

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Division of Water and Waste Management  
601 57<sup>th</sup> Street, SE  
Charleston, WV 25304  
Phone: 304-926-0495 / Fax: 304-926-0463

Harold D. Ward, Cabinet Secretary  
[dep.wv.gov](http://dep.wv.gov)

**ORDER NUMBER 8260**

ISSUED UNDER THE  
WATER POLLUTION CONTROL ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11

**AMENDMENT NUMBER 1**

**CERTIFIED RETURN RECEIPT REQUESTED**

**DATE: May 9, 2023**

**TO: Clarksburg Sanitary Board  
222 West Main Street  
Clarksburg, WV 26301**

Whereby, Administrative Order No. 8260 was issued on May 19, 2015, resultant to the Clarksburg Sanitary Board wastewater collection system being subject to all the state and federal statutes pertaining to combined sewer overflow (CSO) controls and the implementation of a CSO Long-Term Control Plan (LTCP) containing an Implementation Schedule of CSO abatement projects to meet ultimate requirements of the Clean Water Act, The 1994 USEPA CSO Control Policy and West Virginia's CSO LTCP Implementation Policy. The permittee was issued Modification No. 2 to WV/NPDES Permit WV0023302 on May 9, 2023 which contained revised dates for Phases V-VIII for the LTCP Implementation Schedule.

The following items are, hereby, revised to the ORDER FOR COMPLIANCE section of Administrative Order No. 8260:

- The previously established CSO Implementation Schedule shall be superseded by Attachment A, here to.
  - CSO Implementation Schedule Phase I through Phase IV dates have passed as of the date of this Amendment and remain unchanged. It is recognized that these Phases have been completed.
  - CSO Implementation Schedule Phase V through Phase VIII dates have been revised in accordance with WV/NPDES Permit Modification No. 2 issued May 9, 2023.

All other terms and conditions of Administrative Order No. 8260 shall remain unchanged and in effect.

This Amendment to the ORDER shall become effective after receipt.

**RIGHT OF APPEAL**

Notice is hereby given of your right to appeal the terms and conditions of this Amendment to the Order which you aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of Sections 21, Article 11, Chapter 22 of the Code of West Virginia within thirty (30) days after receipt of this Order.



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Katheryn Emery, Director  
Division of Water and Waste Management

KE:rc  
cc w/attachment:  
EPA Region 3  
Environmental Inspector Supervisor

**Administrative Order No. 8260  
Amendment No. 1  
May 9, 2023**

**Attachment A  
CSO Implementation Schedule**

**Phase I – The permittee has completed the following items **on or before December 31, 2009.****

1. Replace an existing gravity sewer line in the Davisson Run area to the Hill-N-Dale subdivision to eliminate the requirements of two (2) lift stations.
2. Installation of a storm sewer in Adamston to separate storm water from sanitary sewage.
3. Cleaning of approximately 3,400 LF of gravity sewer line to maximize flow to the WWTP.
4. Perform miscellaneous manhole rehabilitation work (removed and replaced 11 manholes).
5. The permittee shall continue to submit a brief summation of current LTCP activities in the semiannual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.

**Phase II – The permittee has completed the following items **on or before June 30, 2011.****

1. Implement a CSO discharge monitoring program by installing a minimum of two (2) flow meters and a minimum of four (4) flow detection probes in the most active CSOs.
2. In accordance with WVDEP NCM policy, establish and include in the City's CSO OMM, policies and procedures for documenting customer complaints (which will be available for public review), training for WWTP and Public Works personnel, maintaining an inventory of all critical CSO equipment, inspection and cleaning of all critical CSO equipment, reducing the occurrences of dry weather flows, controlling solids and floatable materials, and implementation of a pollution prevention program.
3. Develop and implement a public education and awareness program concerning the significance and impacts of CSO events.
4. Record and document public involvement concerning CSO operations.
5. The permittee shall continue to submit a brief summation of current LTP activities in the semiannual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.

**Phase III – The permittee has completed the following items **on or before February 28, 2016.****

1. Construct a screen building to house the fine bar screen, disinfection (chlorination/dichlorination or UV), construction of an additional primary clarifier, equipment and concrete channels, and all necessary site work, piping, electrical, and mechanical. The final WWTP upgrade

components and configuration and will be determined during development of the facility plan, which is due to be completed during Phase II, by June 30, 2011.

**Phase III (Continued)**

2. Install a minimum of eight (8) flow meters and fifty-one (51) flow detection probes in the remaining CSO outfalls.
3. Capital improvements shall include: (a) rebuild or replace three (3) process air blowers, (b) purchase a new flusher, (c) purchase new backhoe, (d) rehabilitate approximately 500 LF of sewer line, and rehabilitate two (2) manholes.
4. The permittee shall continue to submit a brief summation of current LTCP activities in the semiannual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.
5. Submit a post construction monitoring evaluation within twelve (12) months after completion of Phase III construction.

**Phase IV – The permittee shall complete the following items on or before December 31, 2018.**

1. Separate approximately 10,000 linear feet of pipe in all sub-sewershed areas except Downtown. This work covers all CSOs except for the following: 004, 082, 006, 077, 020, 022, 028, 017, 030, 019, 021, 023, 025, 027, 033, 034, 036, and 045.
2. Capital improvements will include: (a) septage receiving building and septage receiving unit, (b) RAS pump VFDs, (c) replace 16" influent pump at WWTP influent pumping station, (d) replace slide gate at WWTP pumping station, (e) purchase bridge and jib cranes for WWTP pumping station, (f) replace chlorine hoist, (g) dredge and close an existing ash lagoon, (h) replace approximately 1,000 LF of sewer line, and rehabilitate three (3) manholes, (i) replace wet well screening unit, (j) replace approximately 150 LF of chlorine drain line.
3. The permittee shall continue to submit a brief summation of current LTCP activities in the semiannual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.
4. Submit a post construction monitoring evaluation within twelve (12) months after completion of Phase IV construction.

**Phase V – The permittee shall complete the following items on or before December 31, 2027.**

1. Should it become necessary in order to achieve water quality in the receiving stream during CSO discharges, the permittee shall install an additional 11 MG storage facility including associated piping, plumbing, and required aeration facilities. Storage facility location will be determined after completion of the Phase IV post construction monitoring evaluation.
2. Capital improvements will include: (a) install a new roof on all buildings at the WWTP, (b) replace automatic composite samplers, (c) replace belt filter press and conveyor system, (d) upgrade to boiler system and piping, (f) rehabilitate CSOs in disrepair, (g) continued separation of storm sewers from the combined sewer system.

3. The permittee shall continue to submit a brief summation of current LTCP activities in the semiannual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.
4. Submit a post construction monitoring evaluation within twelve (12) months after completion of Phase V construction.

**Monitoring Period** – The permittee shall monitor their system for a period of three (3) years.

**Phase VI** – The permittee shall complete the following items **on or before December 31, 2034**.

1. Should it become necessary in order to achieve water quality in the receiving stream during CSO discharges, the permittee shall install an additional 11 MG storage facility including associated piping, plumbing, and required aeration facilities. Storage facility location will be determined after completion of the Phase V post construction monitoring evaluation.
2. Capital improvements will include: (a) replace sludge return pumps, (b) replace sludge collectors in final clarifiers, and (c) purchase three (3) new dump trucks.
3. The permittee shall continue to submit a brief summation of current LTCP activities in the semiannual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.
4. Submit a post construction monitoring evaluation within twelve (12) months after completion of Phase VI construction.

**Phase VII** – The permittee shall complete the following items **on or before December 31, 2038**.

1. Should it become necessary in order to achieve water quality in the receiving stream during CSO discharges, the permittee shall install an additional 11 MG storage facility including associated piping, plumbing, and required aeration facilities. Storage facility location will be determined after completion of the Phase VI post construction monitoring evaluation.
2. Capital improvements will include: (a) replace belt press, and (b) as needed, replace miscellaneous laboratory equipment and replace valves and piping throughout the WWTP, (c) rehabilitate approximately 2,000 LF of sewer, and (d) rehabilitate ten (10) manholes.
3. The permittee shall continue to submit a brief summation of current LTCP activities in the semiannual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.
4. Submit a post construction monitoring evaluation within twelve (12) months after completion of Phase VII construction.

**Phase VIII** – The permittee shall complete the following items **on or before December 31, 2042**.

1. Should it become necessary in order to achieve water quality in the receiving stream during CSO discharges, the permittee shall complete the planning, selection, design and implementation of the CSO management practices and controls to meet the requirement of the

Clean Water Act (CWA), the 1994 USEPA Combined Sewer Overflow (CSO) Control Policy and other USEPA guidance documents, and West Virginia's CSO Long-Term Control Plan Implementation Policy.

2. The permittee shall continue to submit a brief summation of current LTCP activities in the semiannual CSO Summary Reports. The flows to the WWTP shall be monitored, evaluated, and summarized in the semi-annual CSO Summary Report.
3. Submit a post construction monitoring evaluation within twelve (12) months after completion of Phase VIII construction.