

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103**

<b>In the Matter of:</b>	:	
	:	
<b>Lyons Creek MHC, LLC</b>	:	<b>U.S. EPA Docket No. CWA-03-2024-0011</b>
<b>1007 Lower Pindell Road</b>	:	
<b>Lothian, MD 20711</b>	:	<b>Proceeding under SECTION 309(g) of the Clean</b>
	:	<b>Water Act, 33 U.S.C. § 1319(g)</b>
<b>and</b>	:	
	:	
<b>Horizon Land Management, LLC</b>	:	
<b>2151 Priest Bridge Drive, Suite 7</b>	:	
<b>Crofton, MD 21114</b>	:	
	:	
<b>Respondents.</b>	:	

**CONSENT AGREEMENT**

**PRELIMINARY STATEMENT**

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 (“Complainant”), Lyons Creek MHC, LLC, and Horizon Land Management, LLC (“Respondents”) (collectively the “Parties”), pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The CWA authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondents under the CWA (or the “Act”) for the violations alleged herein.
  
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

**JURISDICTION**

3. The U.S. Environmental Protection Agency (“EPA”) has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

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4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).
5. Pursuant to Section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA has consulted with the Maryland Department of the Environmental (“MDE”) regarding this action and will transmit a copy of this document to the appropriate MDE official.

#### **GENERAL PROVISIONS**

6. For purposes of this proceeding only, Respondents admit the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, above, Respondents neither admit nor deny the specific factual allegations set forth in this Consent Agreement.
8. Respondents agree not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
9. For purposes of this proceeding only, Respondents hereby expressly waive their right to contest the allegations set forth in **this Consent Agreement and Final Order** and waive their right to appeal the accompanying Final Order.
10. Respondents consent to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondents shall bear their own costs and attorney’s fees in connection with this proceeding.
12. Public notice of this Consent Agreement is required by section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b)(1). EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
14. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States

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except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.

15. “Discharge of a pollutant” means “[a]ny addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source.’” 40 C.F.R. § 122.2.
16. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States, to ensure compliance with the requirements of the CWA. The discharges are subject to specific terms and conditions, as prescribed in the permit. See also 33 U.S.C. § 1311.
17. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized MDE to administer the NPDES program in the State of Maryland beginning in September 1974.
18. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), EPA retains its authority to take enforcement action within Maryland for NPDES permit violations.
19. Lyons Creek MHC, LLC (“Lyons Creek”) was formed on August 12, 2015 with the address 2131 Espey Court, Suite 1, Crofton, Maryland 21114.
20. Lyons Creek is a Maryland limited liability company. Its Sole Member is Horizon MH Communities Fund I, LP, and its General Partner is Horizon MH Fund I GP, LLC.
21. Lyons Creek acquired a manufactured home community, located at 1007 Lower Pindell Road, Lothian, Anne Arundel County, MD 20711, on September 18, 2015.
22. Horizon Land Management, LLC (“Horizon”) is a Maryland limited liability company.
23. Horizon is a property management company that serves as Lyons Creek’s managing agent for the manufactured home community. Horizon reviews, evaluates, negotiates and executes on Lyons Creek’s behalf all service contracts, including the service contract with a third party to operate and manage the Wastewater Treatment Plant (“WWTP”) for the manufactured home community.
24. The WWTP was operated by a contract wastewater treatment operator, Water Services, Inc. until July 15, 2019. Then, effective July 16, 2019, the contract operator for the WWTP changed to Professional Startup & Operational Services, Inc. (“Prostart”) until Horizon terminated the contract on March 31, 2020 as a result of performance concerns. Horizon hired Singh Operational Services, Inc. (“SOS”) to operate the WWTP on April 1, 2020 and SOS continues to be the contract operator of the WWTP.

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25. Section 502(5) of the Act, 33 U.S.C. §1362, provides: “The term ‘person’ means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body.”
26. Lyons Creek and Horizon are Limited Liability Companies in the State of Maryland and each is therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
27. Pursuant to the authority of the Act, the NPDES program approval, and Title 9 of the Environment Article, Annotated Code of Maryland, the MDE issued Maryland National Pollutant Discharge Elimination System Permit No. MD0053511 on January 1, 2017 to Lyons Creek for the WWTP for the manufactured home community in Lothian, Maryland. The Permit expired on December 31, 2021 and is currently administratively extended.
28. The Permit authorizes the terms for the discharge of wastewater from the WWTP in accordance with the provisions of the permit. The Permit requires a permittee to comply with all conditions in the Permit. Horizon is not and has never been a permittee under the Permit.
29. The WWTP is a package style sewage treatment plant with activated sludge and extended aeration. The flow of the influent goes through a bar screen to the aeration tank. Flow from the aeration tank then goes to the clarifier with return lines at the bottom of the clarifier and off of the clarifier’s skimmer to send flow back to the aeration tank. Flow goes over the weir of the clarifier and then to the effluent lift station and to the UV. After UV disinfection, the flow passes through equipment comprised of a green box which has not been operable since before Lyons Creek acquired the manufactured home community and which the current contract operator believes was a charcoal filter. Flow then travels to the flow box and then out to the outfall. The clarifier also has wasting capabilities to send solids back to the sludge tank onsite. The sludge transfer tank has decanting ability to send water back through the treatment process.
30. The Permit authorizes the WWTP to discharge wastewater from its operations through Outfall 001A to Lyons Creek, a tributary of the Patuxent River. The Patuxent River is a “navigable water” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7). Lyons Creek is a water of the United States.
31. The Patuxent River is protected for water contact and recreation, and non-tidal warm water aquatic life. It is also a part of the Chesapeake Bay Watershed.
32. MDE inspected the WWTP on October 6, 2016 and January 9, 2020.

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33. On December 1, 2020, EPA conducted an Inspection of the WWTP. EPA sent an Inspection Report to Horizon concerning the WWTP on February 3, 2021, and received a response back on February 17, 2021, from Lyons Creek.
34. On October 29, 2021, EPA sent a Second Information Request pursuant to CWA Section 308 to Respondents. On January 3, 2022, Respondents sent a response to the Second Information Request.
35. Based on observations made by MDE during its October 6, 2016 and January 9, 2020 inspections, EPA's December 1, 2020 inspection and the responses Respondents submitted to EPA's two Information Requests, EPA has identified the following violations of the Permit and Section 301 of the Clean Water Act by Respondents as owners and/or operators of the WWTP.

**Count I  
Effluent Exceedances**

36. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
37. The Permit sets effluent limits for discharges from Outfall 001A for: five-day biochemical oxygen demand ("BOD5"), Total Suspended Solids ("TSS"), Total Ammonia/Nitrogen, E. Coli, Total Residual Chlorine, pH, and Dissolved Oxygen in Section II.A. The Permit was issued in conformance with the Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus and Sediment established on December 29, 2010.
38. From January 2019 through September 2023, the WWTP recorded fifty (50) effluent exceedances for BOD, pH, TSS, DO, Nitrogen and E. coli as follows:

**Table 1: Effluent Exceedances**

<b>Monitoring Period End Date</b>	<b>Parameter Name</b>	<b>Discharge Monitoring Report Value</b>	<b>Permit Limit</b>	<b>Units</b>	<b>Limit Type</b>
01/31/2019	Solids, total suspended	6.2	5.8	lb/d	Maximum Monthly Average
01/31/2019	Solids, total suspended	12.6	8.8	lb/d	Maximum Weekly Average
11/30/2019	pH	9.1	8.5	SU	Maximum
04/30/2020	Oxygen, dissolved [DO]	4.75	5	mg/L	Minimum
04/30/2020	Solids, total suspended	12.77	8.8	lb/d	Maximum Weekly Average
04/30/2020	Solids, total suspended	18	15	mg/L	Maximum Weekly Average
05/31/2020	Solids, total suspended	12.2	8.8	lb/d	Maximum Weekly Average
06/30/2020	Solids, total suspended	11	10	mg/L	Maximum Monthly Average
06/30/2020	Solids, total suspended	20	15	mg/L	Maximum Weekly Average
07/31/2020	pH	6.24	6.5	SU	Minimum

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Monitoring Period End Date	Parameter Name	Discharge Monitoring Report Value	Permit Limit	Units	Limit Type
07/31/2020	Solids, total suspended	13.18	8.8	lb/d	Maximum Weekly Average
07/31/2020	Solids, total suspended	22	15	mg/L	Maximum Weekly Average
08/31/2020	Solids, total suspended	9.48	8.8	lb/d	Maximum Weekly Average
08/31/2020	Solids, total suspended	12.05	10	mg/L	Maximum Monthly Average
08/31/2020	Solids, total suspended	17.6	15	mg/L	Maximum Weekly Average
09/30/2020	Solids, total suspended	12.42	8.8	lb/d	Maximum Weekly Average
09/30/2020	Solids, total suspended	12.5	10	mg/L	Maximum Monthly Average
09/30/2020	Solids, total suspended	33	15	mg/L	Maximum Weekly Average
10/31/2020	Solids, total suspended	7.12	5.8	lb/d	Maximum Monthly Average
10/31/2020	Solids, total suspended	19.46	8.8	lb/d	Maximum Weekly Average
10/31/2020	Solids, total suspended	11.8	10	mg/L	Maximum Monthly Average
10/31/2020	Solids, total suspended	30.4	15	mg/L	Maximum Weekly Average
11/30/2020	Solids, total suspended	9.04	8.8	lb/d	Maximum Weekly Average
11/30/2020	Solids, total suspended	17.2	15	mg/L	Maximum Weekly Average
04/30/2021	Oxygen, dissolved [DO]	4.66	5	mg/L	Minimum
04/30/2021	pH	6.26	6.5	SU	Minimum
04/30/2021	Solids, total suspended	11.41	8.8	lb/d	Maximum Weekly Average
04/30/2021	Solids, total suspended	17	15	mg/L	Maximum Weekly Average
06/30/2021	BOD, 5-day, 20 deg. C	10.82	8.8	lb/d	Maximum Weekly Average
06/30/2021	BOD, 5-day, 20 deg. C	19.4	15	mg/L	Maximum Weekly Average
01/31/2022	Solids, total suspended	17.86	5.8	lb/d	Maximum Monthly Average
01/31/2022	Solids, total suspended	55.13	8.8	lb/d	Maximum Weekly Average
01/31/2022	Solids, total suspended	22.65	10	mg/L	Maximum Monthly Average
01/31/2022	Solids, total suspended	60	15	mg/L	Maximum Weekly Average
03/31/2022	Solids, total suspended	16	15	mg/L	Maximum Weekly Average
07/31/2022	Solids, total suspended	6.53	5.8	lb/d	Maximum Monthly Average
07/31/2022	Solids, total suspended	12.96	8.8	lb/d	Maximum Weekly Average
07/31/2022	Solids, total suspended	11.68	10	mg/L	Maximum Monthly Average
07/31/2022	Solids, total suspended	25	15	mg/L	Maximum Weekly Average
8/31/2022	Solids, total suspended	13.02	8.8	lb/d	Maximum Weekly Average
8/31/2022	Solids, total suspended	10.08	10	mg/L	Maximum Monthly Average
8/31/2022	Solids, total suspended	19	15	mg/L	Maximum Weekly Average
9/30/2022	Solids, total suspended	9.76	8.8	lb/d	Maximum Weekly Average
9/30/2022	Solids, total suspended	18	15	mg/L	Maximum Weekly Average
1/31/2023	Nitrogen, ammonia total [as N]	2.23	1.8	lb/d	Maximum Monthly Average
1/31/2023	Nitrogen, ammonia total [as N]	4.1	3	mg/L	Maximum Monthly Average
3/31/2023	pH	9.11	8.5	SU	Maximum
6/30/2023	<i>E. coli</i>	268	126	MPN/100mL	Monthly Geometric Maximum
7/31/2023	<i>E. coli</i>	438.19	126	MPN/100mL	Monthly Geometric Maximum
08/31/2023	<i>E. coli</i>	353.2	126	MPN/100mL	Monthly Geometric Maximum

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39. Based on the above assertions and allegations, EPA concludes that from at least January 31, 2019 to September 30, 2023 Respondents failed to comply with the Permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and Section 301 of the CWA, 33 U.S.C. § 1311, by discharging multiple parameters in excess of effluent limitation in the Permit as set forth in Table 1 (Effluent Exceedances).
40. In failing to comply with the effluent limitations contained in the Permit, Respondents violated Section 301 of the CWA, 33 U.S.C. § 1311, and are subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

### **Count 2**

#### **Insufficient or Missing Wastewater Capacity and Flow Reporting**

41. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
42. **Total Cumulative Flow Reporting:** Part II.C of the Permit states that “[t]he permittee shall report the total cumulative flow for [sic] each calendar year for the above referenced facility. The total cumulative flow should be reported in million gallons for the entire calendar year to the nearest ten thousand gallons. The annual total cumulative flow determination shall be provided to [MDE] using NetDMR no later than January 28<sup>th</sup> of the following year.”
43. Respondents did not submit annual total cumulative flow reports in 2019, 2020, or 2021 by the January 28 deadline for each prior year. They provided the annual total cumulative flow for these years to EPA on March 13, 2023.
44. **Waste Capacity Management Plans:** The Permit contains Special Conditions, including at Part II.C, which requires Lyons Creek to report “the total cumulative flow” for each calendar year for the WWTP. If the most recent three-year average flow is over 80% of its design capacity (0.070 million gallons per day (“mgd”)) or if it is anticipated to exceed 80% in the following year, a Wastewater Capacity Management Plan (“WCMP”) (including a “Wastewater Flow Capacity Report (WFCR)” and worksheet for WFCR) must be submitted to MDE no later than January 28 of the following year.
45. The three-year average flow exceeded 80% of the WWTP’s flow capacity for its three-year average for the following timeframes:
  - a. 2019 (2017, 2018, 2019);
  - b. 2020 (2018, 2019, 2020); and
  - c. 2021 (2019, 2020, 2021).
46. Respondents did not submit the 2019 or 2020 WCMPs.

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47. Respondents did not timely submit the 2021 WCMP by the deadline (no later than January 28 of the following year).
48. **Wastewater Flow Capacity Report (WFCR):** The 2021 Permit also required Lyons Creek to submit a WFCR and worksheet for WFCR for the previous calendar year to [MDE] using NetDMR no later than January 28th of each year. 2021 Permit Part II.C(c).
49. Respondents failed to submit WFCRs by the deadline (no later than January 28 of the following year) for 2020.
50. Based on the above assertions and allegations, EPA concludes that Respondents failed to comply with the Permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and Section 301 of the CWA, 33 U.S.C. § 1311, by failing to submit annual total cumulative flow reports for 2019, 2020, and 2021, failing to submit WCMPs for 2019 and 2020, submitting the WCMP for 2021 late, and failing to submit the WFCR for 2020.
51. By failing to comply with the terms of the Permit, Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, and are subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

### **Count 3**

#### **Non-Operational and Malfunctioning Equipment and Infrastructure**

52. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
53. Part III.B.3(a) of the Permit requires the WWTP to “be operated efficiently to minimize upsets and discharges of excessive pollutants.”
54. During its January 9, 2020 Inspection, MDE observed that the sand filter was bypassed in the WWTP.
55. During MDE’s January 9, 2020 inspection, the MDE inspector observed cracks in the walls of the influent manhole, and that the skimmer arm to the clarifier was not working, and that wastewater from the clarifier was leaking into the wasting tank. The effluent pumps near the clarifier wetwell had failed, causing an overflow from the clarifier wetwell to backup into the clarifier/aeration tank and to eventually overflow on to the ground and into a tributary of the Patuxent River.
56. During MDE’s January 9, 2020 inspection, the MDE inspector observed that the WWTP did not have a composite sampler on-site.
57. During EPA’s December 1, 2020 inspection, the inspectors observed that the rotary cloth



filter unit was not in operation, and that the filter was positioned immediately upstream of the UV disinfection banks. The filter unit was not in operation when Lyons Creek acquired the manufactured home community. The contract operator SOS at the WWTP stated that the unit had been out of service for decades. At the time of the inspection, effluent was being channeled through the non-functioning rotary cloth filters to the UV banks.

58. In its February 1, 2021 Response to EPA's Inspection Report, Lyons Creek responded that the cloth filter unit is obsolete and has not been functional.
59. During EPA's December 2020 Inspection, the inspectors also observed a tall green rectangular filter unit downstream of the UV system, prior to the final effluent channel and discharge location. At the time of the inspection, the contract operators from SOS were unsure of the type of filter media in use or why the filter was installed downstream of disinfection. The filter unit is not described in the Permit fact sheet.
60. During EPA's December 1, 2020 inspection, the inspectors observed:
  - a. "[t]he influent bar screen was full of sewage material (rags and solids) at the time of the [EPA] inspection. WWTP representatives stated that the screen is cleaned daily . . . and stated the condition observed was typical."
  - b. The clarifier skimmer arm was still not in operation. The skimmer arm was placed against a chain link fence on the outer perimeter of the WWTP. The contract operator SOS stated that the skimmer arm had been removed for more than two years.
  - c. Bulking solids floating in the clarifier, solids on the clarifier weirs, and solids and scum in the clarifier effluent wet well. One of the two clarifier pumps were not present at the time of the inspection, and it was unclear why it was removed.
61. In its February 1, 2021 Response to EPA's Inspection Report, Lyons Creek responded that the clarifier skimmer arm was beyond repair and would require custom fabrication to replace. In its March 13, 2023 response, Lyons Creek indicated that its engineers evaluated the clarifier and fabrication and installation of new upper and lower rake arms in the clarifier are scheduled to be completed in 2023.
62. During MDE's January 9, 2020 inspection, the MDE inspector observed that the UV intensity panel was not working, and it was unclear if the UV bulbs were in proper working condition. The UV transmittance indicator was flashing at the time of the EPA inspection. Lyons Creek solicited quotes for repair work on the UV transmittance indicator on December 4, 2020.

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63. On September 28, 2020, SOS reported to MDE that the system was having problems with the return, causing sludge to float to the top of the clarifier.
64. On October 20, 2020, SOS reported to MDE that the “Operator on site is continuing to work on the foam issue at the plant. Foam on the clarifier surface caused minor carryover of solids during sampling period.”
65. The WWTP has outstanding repairs and upgrades to make to the WWTP as detailed in the paragraphs above to fix non-operational or malfunctioning equipment and infrastructure which are being addressed pursuant to the Administrative Order on Consent between Respondents and EPA, Docket No. CWA-03-2024-0007DN.
66. Based on the above assertions and allegations, EPA concludes that Respondents failed to comply with the Permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and Section 301 of the CWA, 33 U.S.C. § 1311, by failing to operate the WWTP efficiently to minimize upsets and discharges of excessive pollutants by fixing non-operational or malfunctioning equipment and infrastructure from January 9, 2020 to present.
67. By failing to comply with the terms of the Permit, Respondents have violated Section 301, 33 U.S.C. § 1311, and are subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

#### **Count 4**

#### **Visible Foam/Scum in Process and Effluent**

68. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
69. Section II.A of the Permit sets out the effluent limitations in the Permit. Footnote 2 states, “There shall be no discharge of floating solids or visible foam other than trace amounts.”
70. During EPA’s December 2020 inspection, the inspectors observed foam in the aeration chamber, bulking solids floating in the clarifier, solids in the clarifier weirs, and solids/scum in the clarifier effluent wetwell, which the WWTP representatives attributed to microorganisms and old sludge. The inspectors observed light brown solids and scum on the water surface at the effluent end of the UV channel that next leads to the outfall to be discharged.
71. Based on the above assertions and allegations, EPA concludes that Respondents failed to comply with the Permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and Section 301 of the CWA, 33 U.S.C. § 1311, by discharging floating solids and visible foam on December 1, 2020.

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72. By failing to comply with the terms of the Permit, Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, and are subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**Count 5**  
**Unauthorized Discharge Point**

73. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
74. Part III.B.3(a) of the Permit requires that “All waste collection, control, treatment and disposal facilities shall be operated in a manner consistent with the following: (a) Facilities shall be operated efficiently to minimize upsets and discharges of excessive pollutants.
75. During EPA’s December 2020 inspection, the inspectors observed that the WWTP’s discharge was going into a pipe located in a hole in the ground upstream of Outfall 001A. The pipe was lower than the surrounding grade and the ground surface in the vicinity was mostly dirt and gravel. It appeared that sediment would be able to enter the pipe during a wet weather event and ultimately be discharged to Lyons Creek through Outfall 001A, although no discharge was observed during the inspection.
76. In the Response to the October 2021 Information Request, Lyons Creek stated that the “outfall pipe was repaired.”
77. Based on the above assertions and allegations, EPA concludes that Respondents failed to comply with the Permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and Section 301 of the CWA, 33 U.S.C. § 1311, by using an unauthorized discharge point as alleged above on at least December 1, 2020.
78. By failing to comply with the terms of the Permit, Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, and are subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**Count 6**  
**Failure to Operate Plant Efficiently and Minimize Discharge of Pollutants**

79. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
80. Part III.B.3(a) and (b) of the Permit requires that “[a]ll waste collection, control, treatment and disposal facilities shall be operated in a manner consistent with the

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following: (a) Facilities shall be operated efficiently to minimize upsets and discharges of excessive pollutants. (b) The permittee shall provide an adequate operating staff qualified to carry out operation, maintenance and testing functions required to ensure compliance with this permit . . . .”

81. During EPA’s December 2020 inspection, the inspectors observed:
- a. The influent bar screen was full of sewage material (rags and solids) at the time of the inspection;
  - b. Foam was in the aeration chamber;
  - c. Bulking solids were observed floating in the clarifier and solids were observed on the clarifier weirs;
  - d. The clarifier skimmer arm was not in operation at the time of the inspection. The January 9, 2020 MDE inspection report recommended that repairs be made to the skimmer arm immediately, but the repairs were not made at the time of the December 1, 2020 inspection. Inspectors observed the skimmer arm placed against a chain link fence on the outer perimeter of the WWTP. The skimmer arm had not been utilized at the WWTP for a number of years and was beyond repair at the time of MDE’s January 9, 2020 inspection. Replacement of the bottom and top clarifier skimmer arms are scheduled for December 2023;
  - e. One of the two clarifier effluent pumps was not present at the time of the inspection;
  - f. The outer ring of the WWTP, which could be used for additional capacity or emergency storage, was filled with solids and vegetation; and
  - g. Light brown solids and scum were observed on the water surface at the effluent end of the UV channel; and
  - h. The WWTP did not have an operation and maintenance manual on site that outlines the proper operation and maintenance of the WWTP.
82. On February 17, 2021, Lyons Creek wrote that it was in the process of drafting an Operations and Maintenance (“O&M”) manual for the WWTP.
- a. On January 3, 2022, Lyons Creek reported to EPA that it did not have a completed O&M manual and that SOS would be contacting manufacturers of the components at the WWTP to compile information for the O&M manual.
  - b. On March 13, 2023, Lyons Creek reported to EPA that it still did not have an O&M manual.
  - c. An O&M manual was completed on May 31, 2023.
83. Based on the above assertions and allegations, EPA concludes that Respondents failed to comply with the Permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342,

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and Section 301 of the CWA, 33 U.S.C. § 1311, by failing to operate the WWTP efficiently to minimize upsets and discharges of excessive pollutants on December 1, 2020.

84. By failing to comply with the terms of the Permit, Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, and are subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

#### **CIVIL PENALTY**

85. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondents consent to the assessment of a civil penalty in the amount of **Three-Hundred Twenty-Three Thousand and Eighty-One dollars (\$323,081)**, which Respondents shall be jointly and severally liable to pay in accordance with the terms set forth below.
86. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), including, the following: the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Interim Clean Water Act Settlement Penalty Policy* (1995) which reflects the statutory penalty criteria and factors set forth at Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
87. Respondents agree that, within 30 days of the effective date of this Consent Agreement and Final Order, Respondents shall make a payment of **\$323,081.00** to "**United States Treasury**" with the case name, address, and docket number of this Consent Agreement and Final Order (**CWA-03-2024-0011**), for the amount specified above. Respondents shall pay the assessed penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
88. A copy of Respondents' check or other documentation of payment of the penalty using the method selected by Respondents for payment shall be sent simultaneously **by email** to:

Aviva Reinfeld  
Assistant Regional Counsel  
[Reinfeld.aviva@epa.gov](mailto:Reinfeld.aviva@epa.gov)

**and**

U.S. EPA Region 3 Regional Hearing Clerk  
[R3\\_Hearing\\_Clerk@epa.gov](mailto:R3_Hearing_Clerk@epa.gov).

89. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondents' failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
90. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by Respondents or Respondents' legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondents in accordance with 40 C.F.R. § 13.9(a).
91. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
92. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
93. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
94. Respondents agree not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

95. **The Parties consent to service of the Final Order by e-mail at the following valid email addresses: [reinfeld.aviva@epa.gov](mailto:reinfeld.aviva@epa.gov) (for Complainant), and [dodabashian@horizonlandco.com](mailto:dodabashian@horizonlandco.com) and [tysonr@BSK.com](mailto:tysonr@BSK.com) (for Respondents).**
96. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, including amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:
- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
  - b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
  - c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at [henderson.jessica@epa.gov](mailto:henderson.jessica@epa.gov), within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
  - d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
    - i. notify EPA’s Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the effective date of this Order per Paragraph 103; and

*In the Matter of: Lyons Creek MHC, LLC*

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- ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

#### **GENERAL SETTLEMENT CONDITIONS**

97. By signing this Consent Agreement, Respondents acknowledge that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondents' knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondents.
98. Respondents certify that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondents to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about Respondents' ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondents and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.
99. Respondents certify to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with the Administrative Order on Consent between Respondents and EPA, Docket No. CWA-03-2024-0007DN, which addresses the violations alleged herein.

#### **OTHER APPLICABLE LAWS**

100. Nothing in this Consent Agreement and Final Order shall relieve Respondents of their obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state, or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension, or modification of the requirements of the CWA, or any regulations promulgated thereunder.

#### **RESERVATION OF RIGHTS**

101. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for



*In the Matter of: Lyons Creek MHC, LLC*

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the specific violations alleged against Respondents in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

#### **EXECUTION /PARTIES BOUND**

102. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondents and the officers, directors, employees, contractors, successors, agents and assigns of Respondents. By their signature below, the person who signs this Consent Agreement on behalf of Respondents is acknowledging that they are fully authorized by the Respondents to execute this Consent Agreement and to legally bind Respondents to the terms and conditions of this Consent Agreement and Final Order.

#### **EFFECTIVE DATE**

103. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Administrator or their delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

#### **ENTIRE AGREEMENT**


104. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

*In the Matter of: Lyons Creek MHC, LLC*

*EPA Docket No. CWA-03-2014-0011*

For Respondent: Lyons Creek MHC, LLC

Date: 1/16/2024

DocuSigned by:  
  
By: 087A1F784A7C488...

Andrew Odabashian  
Vice President  
Lyons Creek MHC, LLC,  
a Maryland limited liability company

By: HORIZON MH COMMUNITIES FUND I, LP,  
a Delaware limited liability company,  
its Sole Member


By: Horizon MH Fund I GP, LLC,  
a Delaware limited liability company,  
its General Partner

*In the Matter of: Lyons Creek MHC, LLC*

*EPA Docket No. CWA-03-2014-0011*

For Respondent: HORIZON LAND MANAGEMENT, LLC, a Maryland limited liability company

Date: 1/16/2024

By:  987A1F784A7C488...  
Andrew Odabashian  
President

*In the Matter of: Lyons Creek MHC, LLC*

*EPA Docket No. CWA-03-2014-0011*

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or their designee, the Regional Judicial Officer, issue the attached Final Order.

By: \_\_\_\_\_

*[Digital Signature and Date]*

Karen Melvin, Director  
Enforcement & Compliance Assurance Division  
U.S. EPA – Region 3  
Complainant

Attorney for Complainant:

By: \_\_\_\_\_

*[Digital Signature and Date]*

Aviva Reinfeld  
Assistant Regional Counsel  
U.S. EPA – Region 3

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103**

<b>In the Matter of:</b>	:	
	:	
<b>Lyons Creek MHC, LLC</b>	:	<b>U.S. EPA Docket No. CWA-03-2024-0011</b>
<b>1007 Lower Pindell Road</b>	:	
<b>Lothian, MD 20711</b>	:	<b>Proceeding under SECTION 309(g) of the Clean</b>
	:	<b>Water Act, 33 U.S.C. § 1319(g)</b>
<b>and</b>	:	
	:	
<b>Horizon Land Management, LLC</b>	:	
<b>2151 Priest Bridge Drive, Suite 7</b>	:	
<b>Crofton, MD 21114</b>	:	
	:	
<b>Respondents.</b>	:	

**FINAL ORDER**

Complainant, the Director of the Enforcement Compliance and Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondents, Lyons Creek, MHC LLC and Horizon Land Management, LLC, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to [Sections 22.13(b) and 22.18(b)(2) and (3)]. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Interim Clean Water Act Settlement Penalty Policy* (1995) and the statutory factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**NOW, THEREFORE, PURSUANT TO** Section 309(g), 33 U.S.C. § 1319(g) of the CWA and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondents pay a civil penalty in the amount of **THREE-HUNDRED TWENTY-THREE THOUSAND EIGHTY-ONE DOLLARS (\$323,081.00)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final

*In the Matter of: Lyons Creek MHC, LLC*

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Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish, or otherwise affect Respondents' obligation to comply with all applicable provisions of the CWA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

By: \_\_\_\_\_  
[*Digital Signature and Date*]  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA – Region 3

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103**

<b>In the Matter of:</b>	:	
	:	
<b>Lyons Creek MHC, LLC</b>	:	<b>U.S. EPA Docket No. CWA-03-2024-0011</b>
<b>1007 Lower Pindell Road</b>	:	
<b>Lothian, MD 20711</b>	:	<b>Proceeding under SECTION 309(g) of the Clean</b>
	:	<b>Water Act, 33 U.S.C. § 1319(g)</b>
<b>and</b>	:	
	:	
<b>Horizon Land Management, LLC</b>	:	
<b>2151 Priest Bridge Drive, Suite 7</b>	:	
<b>Crofton, MD 21114</b>	:	
	:	
<b>Respondents.</b>	:	

**CERTIFICATE OF SERVICE**

I certify that the foregoing ***Consent Agreement and Final Order*** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the ***Consent Agreement and Final Order***. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Andrew Odabashian  
Lyons Creek MHC, LLC  
Horizon Land Management, LLC  
[dodabashian@horizonlandco.com](mailto:dodabashian@horizonlandco.com)  
2151 Priest Bridge Drive, Suite 7  
Crofton, MD 21114

Robert Tyson, Esq.  
Bond, Schoeneck & King PLLC  
[tysonr@BSK.com](mailto:tysonr@BSK.com)  
110 West Fayette St.  
Syracuse, NY 13202-1355  
One Lincoln Center

Aviva Reinfeld, Esq.  
Assistant Regional Counsel  
U.S. EPA, Region 3  
[Reinfeld.aviva@epa.gov](mailto:Reinfeld.aviva@epa.gov)

Kaitlin McLaughlin  
Enforcement & Compliance Assurance Div.  
U.S. EPA, Region 3  
[mclaughlin.kaitlin@epa.gov](mailto:mclaughlin.kaitlin@epa.gov)

By: \_\_\_\_\_  
[Digital Signature and Date]  
Regional Hearing Clerk  
U.S. EPA – Region 3