



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Doug Domenech
Secretary of Natural Resources

David K. Paylor
Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Southampton County
FOR
Town of Boykins Wastewater Treatment Plant
VPDES Permit No. VA0026417**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Southampton County, regarding the Town of Boykins Wastewater Treatment Plant, for the purpose of resolving certain violations of the Permit, the State Water Control Law and the VPDES Permit Regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "County" means Southampton County, a political subdivision of the Commonwealth of Virginia. The County is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "DMR" means Discharge Monitoring Report.

6. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
7. "Facility" or "WWTP" means the Wastewater Treatment Plant located at 19028 Number 8 Schoolhouse Road in the Town of Boykins, Southampton County, Virginia, which treats and discharges treated domestic waste water with industrial contribution, for the residents and businesses of the County under VPDES Permit No. VA0026417.
8. "Narricot" means Narricot Industries, L.L.C., a textile manufacturing facility located in the Town of Boykins, Southampton County, Virginia.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" means VPDES Permit No. VA0026417, which was issued under the State Water Control Law and the Regulation to the County on November 22, 2005, and which expired on November 21, 2010. The Permit was renewed effective November 22, 2010, and expires November 21, 2015.
12. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 9 VAC 25-31-10.
13. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
14. "Pretreatment Permit" means the permit issued by the County to Narricot that authorizes Narricot to discharge treated process waste water to the Facility within limits for a

number of parameters including pH, color, total Kjeldahl nitrogen (“TKN”), ammonia, and total recoverable (“TR”) copper. The Pretreatment Permit was issued July 1, 2007, and was to expire June 30, 2011, but was administratively extended until October 1, 2011.

15. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
16. “State Water Control Law” means Chapter 3.1 (§§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. “305(b) report” means the report required by Section 305(b) of the Clean Water Act [33 United States Code § 1315(b)] and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
19. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
20. “Va. Code” means the Code of Virginia (1950), as amended.
21. “VAC” means the Virginia Administrative Code.
22. “VPDES” means Virginia Pollutant Discharge Elimination System.
23. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The County owns and operates the Facility. The Permit allows the County to discharge treated municipal waste water with industrial contribution from the Facility to the Meherrin River in compliance with the terms and conditions of the Permit.
2. The Meherrin River is located in the Chowan River and Dismal Swamp Basin. This segment of the Meherrin River is not listed in DEQ’s 305(b) report as impaired.
3. The Permit also authorizes the County to implement an approved pretreatment program. Pursuant to the approved pretreatment program, the County issued the Pretreatment Permit to Narricot.

4. Part I.A of the Permit requires the County to submit DMRs monthly for discharges from the Facility to State waters.
5. In submitting its DMRs for the months of September and November 2009 the County indicated that it could not determine if it had complied with the discharge limitations contained in Part I.A.1 of the Permit for biochemical oxygen demand ("BOD") as the analyses were invalid.
6. In submitting its DMRs for December 2009 and January 2010, the County indicated that it exceeded discharge limitations for ammonia.
7. In submitting its DMR for February 2010, the County indicated that it continued to exceed discharge limitations for ammonia. The DMR also failed to note the monitoring period to which it applied.
8. In submitting its DMR for March 2010, the County indicated that it continued to exceed discharge limitations for ammonia.
9. In submitting its DMR for May 2010, the County indicated that it exceeded discharge limitations for TR copper. In the DMR the County also indicated that it could not determine if it had complied with the discharge limitations for BOD as the analyses were invalid.
10. In submitting its DMRs for June, July and August 2010, the County indicated that it continued to exceed discharge limitations for TR copper.
11. In submitting its DMRs for September, November and December 2010 and for January, February and March 2011, the County indicated that it continued to exceed discharge limitations for ammonia.
12. TRO issued Warning Letters and Notices of Violation for the exceedances and reporting deficiencies described in Sections C(5) through C(11) as follows: Warning Letters Nos. W2010-04-T-1003 (dated April 13, 2010) and W2010-05-T-1012 (dated May 11, 2010), and Notices of Violation ("NOV") W2010-08-T-0004 (dated September 2, 2010), W2010-09-T-0005 (dated October 1, 2010), W2010-11-T-0001 (dated November 10, 2010), W2011-02-T-0001 (dated March 1, 2011), W2011-03-T-0001 (dated April 1, 2011), and W2011-05-T-0001 (dated May 18, 2011).
13. DEQ staff visited the Facility on September 24, 2010, and the County responded to each of the Warning Letters and Notices of Violation. The County attributed the TR copper exceedances to one or more possible causes: a high level of copper that occurs naturally in the ground water that is the source of water for the Facility's domestic and industrial dischargers; copper that leaches from older domestic water lines; and a polymer in Narricot's industrial discharge that inhibits the ability of the sludge used in the Facility's biological treatment process to properly absorb copper. The degraded sludge was also suggested as a possible cause for the ammonia exceedances.

14. The County stated that it was considering corrective measures including removing the sludge from the Facility's aeration basin, making the discharge limits in the Pretreatment Permit more stringent when it is renewed on October 1, 2011, and, eventually, upgrading the Facility. The County has developed a scope of work to upgrade the Facility and to remove, dewater and dispose of the sludge. Bid documents for prospective contractors to complete the Facility upgrade and sludge removal were advertised during the week of August 7, 2011. The cost of the Facility upgrade and sludge removal is estimated as \$800,000. The County is exploring various options for funding the project. Appendix B contains interim effluent limitations that the County will be expected to meet until the Facility upgrade is complete.
15. On December 1, 2008, Narricot entered into a Special Order by Consent with the County ("County Order") to address a number of violations of the effluent limits established in the Pretreatment Permit for pH, color, TKN, toxicity and ammonia during the period April to August 2008. The County Order required payment of a \$20,000 civil charge (payable directly to the County or to be used by Narricot for engineering studies and/or pretreatment process improvements) in the event Narricot was unable to "perfect compliance" with the effluent limits contained in the Pretreatment Permit by December 1, 2010. As Narricot reported four violations of the effluent limits contained in the Pretreatment Permit during calendar year 2010 (twice for toxicity and once each for color and TR copper) the County enforced the \$20,000 civil charge required by the County Order, which Narricot invested in pretreatment process improvements rather than pay directly to the County. The County Order remains open; the County is continuing to work with Narricot to resolve the toxicity violations and to optimize the performance of Narricot's pretreatment process. Process improvements will be addressed in the Pretreatment Permit when it is renewed effective October 1, 2011.
16. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
17. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes, or other wastes.
18. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
19. The Department has issued no permits or certificates to the County other than VPDES Permit No. VA0026417.
20. The Meherrin River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
21. Based on the results of the DMRs and accompanying documentation submitted by the County to DEQ for the months of September 2009 through February 2011, and the

County's responses to the Warning Letters and NOV's, the Board concludes that the County has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(5) through C(11), above.

22. In order for the County to complete its return to compliance, DEQ staff and representatives of the County have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the County, and the County agrees to:

1. Perform the actions described in Appendices A and B of this Order; and
2. Pay a civil charge of \$4,340 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The County shall include its Federal Employer Identification Number (FEIN) (54-6001618) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the County for good cause shown by the County, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2)

seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, the County admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The County consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The County declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the County intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the County. Nevertheless, the County agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the County has completed all of the requirements of the Order;
 - b. the County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the County and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the County certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the County.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23 day of September, 2011.

[Signature]
Regional Director
Department of Environmental Quality

Southampton County voluntarily agrees to the issuance of this Order.

Date: JULY 18, 2011 By: [Signature], COUNTY ADMINISTRATOR
(Person) (Title)
Southampton County

Commonwealth of Virginia
City/County of Southampton

The foregoing document was signed and acknowledged before me this 18 day of
July, 2011, by Michael W. Johnson who is
the County Administrator of Southampton County, on behalf of the County.

[Signature]
Notary Public

7362736
Registration No.

My commission expires: 7.31.2014

Notary seal:

Lynette C. Lowe
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7362736
My Commission Expires 7.31.2014

APPENDIX A SCHEDULE OF COMPLIANCE

1. On or before January 1, 2012, the County shall submit to DEQ for review and approval a Corrective Action Plan ("Plan") and Schedule to improve the quality of the waste water that discharges from the Facility so that it meets the Permit effluent limits for ammonia and total recoverable copper. In developing the Plan and Schedule the County shall consider, at a minimum, the following: physically upgrading the Facility and its waste water collection system; modifying the procedures by which the Facility is operated and maintained; and placing more stringent discharge limits or operational requirements in Narricot's Pretreatment Permit. All work under the Plan and Schedule must be completed by January 1, 2013.
2. Beginning April 1, 2012, the County shall submit quarterly progress reports to DEQ. Subsequent quarterly reports shall be due on July 1, October 1, and January 1, 2013. Quarterly reports shall include at a minimum: the status of the upgrades to the Facility and the waste water collection system; all maintenance performed on the Facility during the preceding three-month period; changes in Facility operations, if any; training of Facility operators, if any; and a summary of Narricot's compliance with the standards and requirements of its Pretreatment Permit.
3. Unless otherwise specified in this Order, the County shall submit all requirements of Appendix A of this Order to:

Regional Director
DEQ, Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, VA 23462

APPENDIX B

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

From the effective date of this Order until completion of the corrective action requirements contained in Appendix A, and in accordance with the approved schedule for such action the County shall monitor and limit the discharge from Outfall No. 001 of the Facility in accordance with VPDES Permit Number VA0026417, except as specified below. These interim limits shall retroactively apply, if applicable, as of the first day of the month in which this Order becomes effective.

These requirements shall be construed in light of the Regulation.

Parameter Description	Parameter Limits	
	Monthly Average	Monthly Maximum
Ammonia	15.0 mg/L	15.0 mg/L
Copper, Total Recoverable	31.0 µg/l	31.0 µg/l