



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

**Coeburn-Norton-Wise Regional Waste Water Treatment Authority
FOR
Coeburn-Norton-Wise Regional WWTP
VPDES Permit No. VA0077828**

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 Coeburn-Norton-Wise Regional Waste Water Treatment Authority, regarding the Coeburn-Norton-Wise Regional WWTP, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

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

1. "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. The "303(d) report" is a subset of the "305(b) report".
2. "Authority" or "CNW Regional Waste Water Treatment Authority" means Coeburn-Norton-Wise Regional Waste Water Treatment Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* The Coeburn-Norton-Wise Regional Waste Water Treatment Authority is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "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.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility", "Plant" or "WWTP" means the Coeburn-Norton-Wise Regional Wastewater Treatment Plant, located at 11550 Pine Camp Road (State Route 699), Coeburn, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Coeburn-Norton-Wise Regional Waste Water Treatment Authority service area.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "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.
13. "Permit" means VPDES Permit No. VA0077828, which has been reissued under the State Water Control Law and the Regulation to the Coeburn-Norton-Wise Regional Waste Water Treatment Authority, with an effective date of February 5, 2013 and which expires on February 4, 2018.
14. "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.

15. "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.
16. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "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.
20. "TMDL" means Total Maximum Daily Load.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "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 Authority owns and operates the WWTP. The Permit allows the Authority to discharge treated sewage and other municipal wastes from the WWTP, to the Guest River, in strict compliance with the terms and conditions of the Permit.
2. The Guest River is located in the Tennessee-Big Sandy River Basin. The DEQ 2010 Water Quality Assessment Report (303d) lists two impairments in the Guest River in a segment from the Parson Branch confluence downstream to the Bad Branch confluence. The report identifies benthic-macroinvertebrate impairment due to sediment as a result of

mining, silviculture and rural activities, and PCBs in edible fish tissue with sources not identified. In addition to benthic and PCB impairments, and pending EPA approval, the DEQ 2012 Water Quality Assessment Report adds E. coli as an impairment. Stressors for the E. coli impairment include failing septic systems and direct dischargers. As a result, the Guest River does not currently support aquatic life, fish consumption and swimmable uses.

3. In submitting its DMRs, as required by the Permit, the Authority has indicated that it exceeded the maximum concentration discharge limitation contained in Part I.A of the Permit, for ammonia as N (June through November), in June, 2011, and that it exceeded both the average and maximum concentration discharge limitations contained in Part I.A of the Permit, for ammonia as N (June through November), for the months of September, October and November, 2011. The Authority also reported two overflows occurring during July, 2011, and one overflow each during the months of September and November, 2011. All of these overflows occurred at the headworks to the WWTP. The Authority has indicated that it exceeded the following discharge limitations in 2012: total suspended solids, average and maximum concentrations (mg/L) and average and maximum loadings (KG/D), and carbonaceous biochemical oxygen demand (CBOD5) maximum concentration and maximum loading, all during May; both the average and maximum concentration discharge limitations for ammonia as N (Jun - Nov) during June and November, and the instantaneous technical minimum concentration for chlorine during July. Two overflows were also reported in July, 2012, one at the headworks to the WWTP, the other at the Josephine pump station.
4. SWRO issued Warning Letters and Notices of Violation for the exceedances noted in paragraph C(3) above as follows: WL No. W2011-10-S-1006, issued October 31, 2011, WL No. W2011-12-S-1001, issued December 6, 2011 and NOV No. W2012-01-S-0001, issued January 30, 2012 for the exceedances and overflows which occurred in 2011; WL No. W2012-06-S-1011, issued July 3, 2012 and NOV No. W2012-09-S-0001, issued September 17, 2012 for the exceedances and the overflow which occurred at the Josephine pump station in 2012. In addition, the Authority reported an overflow at the headworks to the WWTP in July, 2012, and exceedances of the average and maximum concentration discharge limitations for ammonia as N (June through November) during November, 2012 which were not cited in an NOV, but are included in this Order.
5. The Authority responded to the Warning Letters and Notices of Violation by submitting written responses dated November 21, 2011, April 3, 2012, December 26, 2012 and January 28, 2013. The Authority submitted a schedule for construction of an upgrade/expansion project, and a request (with justification) for interim limits during construction. The Permit contains tiered final effluent limits for the upgraded/expanded 6.5 MGD WWTP upon completion of construction and issuance of a Certificate to Operate.
6. The Authority's operating logs indicate that it discharged treated wastewater from the WWTP every day from July 1, 2011 through November 30, 2012.

7. 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.”
8. 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.
9. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
10. The Department has issued no permits or certificates to the Authority other than VPDES Permit No. VA0077828.
11. The Guest River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
12. Based on the results reported on the monthly DMRs for the months noted, meetings on February 16, 2012 and October 24, 2012, and/or the documentation dated November 21, 2011, and April 3, 2012, the Board concludes that the Authority has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging treated and untreated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(3), above.
13. On February 16, 2012 and October 24, 2012, Department staff met with representatives of the Authority to discuss the violations, including the Authority’s written responses.
14. In order for the Authority to complete its return to compliance, DEQ staff and representatives of the Authority have agreed to payment of a civil charge, a Schedule of Compliance for upgrade/expansion of the WWTP which is incorporated as Appendix A of this Order, and with interim limits as described in Appendix B of this Order.

Section D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d), the Board orders Coeburn-Norton-Wise Regional Waste Water Treatment Authority, and Coeburn-Norton-Wise Regional Waste Water Treatment Authority agrees to:

1. Perform the actions described in Appendices A and B of this Order; and
2. Pay a civil charge of \$5,782.00 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

Coeburn-Norton-Wise Regional Waste Water Treatment Authority shall include its Federal Employer Identification Number (FEIN) 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, Coeburn-Norton-Wise Regional Waste Water Treatment Authority shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Authority for good cause shown by the Authority, 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, in NOV Nos. W2012-01-S-0001, dated January 30, 2012 and W2012-09-S-0001, dated September 17, 2012 and in Warning Letter Nos. WL No. W2011-10-S-1006, issued October 31, 2011, WL No. W2011-12-S-1001, issued December 6, 2011 and WL No. W2012-06-S-1011, issued July 3, 2012. In addition, the Authority reported exceedances of the average and maximum concentration discharge limitations for ammonia as N (June through November) during November, 2012 which were not cited in an NOV, but are included in 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 Authority admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Authority 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 Authority 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 Authority 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 Authority 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 unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Authority shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Authority 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 parties intend 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 and any 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 Authority. Nevertheless, the Authority 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 Authority has completed all of the requirements of the Order;

- b. the Authority 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 Authority.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Authority 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 Authority 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 Authority 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 Authority to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Authority.
- 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 Authority voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18 day of June, 2013.



Allen J. Newman, P.E., Regional Director
Department of Environmental Quality

Coeburn-Norton-Wise Regional Waste Water Treatment Authority voluntarily agrees to the issuance of this Order.

Date: April 1, 2013 By: Mark Hollyfield, EXECUTIVE DIRECTOR
(Person) (Title)
Coeburn-Norton-Wise Regional Waste Water Treatment Authority

Commonwealth of Virginia

City/County of Washington

The foregoing document was signed and acknowledged before me this 1st day of April, 2013, by Mark Hollyfield who is Executive Director of Coeburn-Norton-Wise Regional Waste Water Treatment Authority on behalf of the Authority.

Amarda R. Statzer
Notary Public

7522856
Registration No.

My commission expires: 8/31/16

Notary seal:



References

Va. Code § 55.118.6

Va. Code §§ 47.1-2, -16

Notary Handbook (at Sec. of Commonwealth)

APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law and Regulations and the Permit, the Coeburn-Norton-Wise Regional Waste Water Treatment Authority agrees to implement the following actions by the dates noted below:

1. Complete chlorine building improvements.....October 31, 2013
2. Complete headworks improvements and new influent pumps installation..November 30, 2013
3. Complete improvements to digesters 1 and 2.....December 31, 2013
4. Complete construction of the new tertiary disc filter building.....April 30, 2014
5. Complete biological reactor improvements.....September 30, 2014
6. Complete upgrades to Secondary Clarifiers 1 and 2.....December 30, 2014
7. Achieve Substantial Completion.....January 31, 2015
8. Achieve Final Completion.....March 30, 2015
9. Notify DEQ in writing within ten days of completion of any item noted in Items 1 through 8 above.
10. Submit quarterly progress reports to the SWRO; the first report, for the reporting period April 1, 2013 through June 30, 2013, shall be due on July 10, 2013; subsequent quarterly reports shall be submitted in the same manner until the project is completed.
11. All reports submitted to the SWRO shall be mailed to the attention of Ruby Scott, Compliance Auditor, 355-A Deadmore Street, Abingdon, VA 24210.

**APPENDIX B
 INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

From the effective date of this Order until completion of construction and issuance of a Certificate to Operate for the upgraded/expanded 6.5 MGD facility, but no later than June 30, 2015, the Coeburn-Norton-Wise Regional Waste Water Treatment Authority shall monitor and limit the discharge from Outfall No. 001 of Coeburn-Norton-Wise Regional Waste Water Treatment Plant in accordance with VPDES Permit Number VA0077828, 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					Monitoring Requirements	
	Quantity Average	Quantity Maximum	Concentration Minimum	Concentration Average	Concentration Maximum	Sample Frequency	Sample Type
Parameter 312 - Ammonia, as N (Jun-Nov)				N/A	11 mg/l	3 D/W	24 HC
Parameter 313 - Ammonia, as N (Dec-May)				N/A	15 mg/l	3 D/W	24 HC
Parameter 004 TSS	Monitoring Only	Monitoring Only		N/A	45 mg/l	3 D/W	24 HC

LOW FLOW INSTREAM MONITORING REQUIREMENTS FOR AMMONIA as N:

The interim limits for ammonia as Nitrogen noted above may cause water quality standards violations in the WWTP's initial mixing zone. However the ammonia concentration in the mixing zone is a function of stream flow, effluent flow and distance downstream in the mixing zone. Also, the ammonia Water Quality Standard is a function of temperature and pH. In order to evaluate the potential for violations in the mixing zone, the Authority shall conduct ammonia monitoring in the mixing zone whenever stream flows are below 20 cfs. Instream monitoring shall consist of:

- a. Establishment of the center of the mixing zone at 25, 50, 75 and 100 feet downstream.
- b. Sampling at a frequency of 1/mo., in the center of the mixing zone at 25, 50, 75 and 100 ft downstream, for ammonia as N, pH and temperature, whenever the stream flow drops below 20 cfs as measured at the Guest River gage just downstream of the discharge. See: http://waterdata.usgs.gov/va/nwis/uv/?site_no=03524500&PARAMeter_cd=00065,00060,62620,00062.
- c. The Authority shall submit results of monthly instream ammonia monitoring with each monthly DMR; if instream monitoring is not required during a month, a statement to that effect shall be submitted with the DMR.

ANNUAL TOTAL SUSPENDED SOLIDS WASTELOAD ALLOCATION REPORTING

The approved DEQ TMDL report for the Guest River includes the Coeburn-Norton-Wise Regional Wastewater Treatment Plant discharge. The TMDL for this discharge contains an annual waste load allocation for total suspended solids of 182 tons per year.

The Coeburn-Norton-Wise Regional Waste Water Treatment Authority shall calculate and report the actual annual total suspended solids waste load tonnage discharged for each calendar year during which these interim limits are in effect (whether interim limits are in effect for the entire year or only a portion of the year). Each report shall be submitted no later than January 31 of the following year.