



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
THE TOWN OF CULPEPER
FOR
THE TOWN OF CULPEPER WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0061590**

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 the Town of Culpeper, regarding the Town of Culpeper Wastewater Treatment Plant, 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. "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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "DMR" means Discharge Monitoring Report.
5. "Facility" or "Plant" means the Town of Culpeper Wastewater Treatment Plant located in Culpeper County, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Culpeper and Culpeper County.

6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "O&M" means operations and maintenance.
9. "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.
10. "Permit" means VPDES Permit No. VA0061590, which was issued October 1, 2004, which was modified on March 21, 2007, and which expires on September 30, 2009. The Permit has been administratively continued until it is reissued.
11. "Pollutant" means "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.
12. "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.
13. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "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.

16. "The Town" means "the Town of Culpeper", a political subdivision of the Commonwealth of Virginia. The Town of Culpeper is a "person" within the meaning of is a "person" within the meaning of Va. Code § 10.1-1300/§ 10.1-1400/§ 62.1-44.3.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "VPDES" means Virginia Pollutant Discharge Elimination System.
20. "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 Town owns and operates the Plant in Culpeper, Virginia. The Permit allows the Town to discharge treated sewage and other municipal wastes from the Plant, to Mountain Run, in strict compliance with the terms and conditions of the Permit.
2. Mountain Run is located in the Rappahannock River Basin. The stream segment where the discharge is located is not listed as impaired in the 2008 305b/303d Integrated Report.
3. In submitting its DMRs, as required by the Permit, the Town has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for the weekly concentration average maximum limit for Total Kjeldahl Nitrogen, the monthly concentration average limit for Ammonia as Nitrogen, and the weekly concentration average maximum limit for Ammonia as Nitrogen for the month of January 2009. In addition the Town indicated that it violated the weekly concentration average maximum limit for Ammonia in February 2009, and the instantaneous technical minimum limit for chlorine in March 2009.
4. The Town reported to DEQ that a severe storm occurred on June 26, 2009, causing loss of primary and secondary power at Pump Station 1. The Town reported to DEQ, that due to this power outage, an overflow of approximately 84,000 gallons of raw sewage discharged to Mountain Run from the sanitary sewer collection system outside of the Plant property.
5. The Town reported to DEQ that on August 4, 2009, at 7:30AM the Town discovered the force main from Pump Station #4, Continental Texas, was leaking, resulting in an estimated release of 4,452 gallons of raw sewage. The Town reported to DEQ that the leak was patched by 9:30AM, that the affected areas were very limited, and very little of the discharge reached Mountain Run.

6. DEQ conducted an inspection of the Plant on June 11, 2009, and found several areas of concern that had been noted on previous inspections conducted on December 14, 2006, and December 4, 2007. These items included repeated issues with influent pumps being out of service, rips and degradation to the liner of cell number 1 of the equalization lagoon, and outstanding repairs to the primary clarifiers.
7. The Town reported to DEQ that on August 29, 2009, the Town discovered sewage seeping out of the clean-out pipe and manhole of the wet well at the Montanus pump station. The Town reported to DEQ that the lead pump failed when vibration caused a wiring short to the pump. The back-up pump failed to prime when grease clogged the vacuum sensor bulb. The call box did not call out with a high level alarm because the phone connection box was faulty. Plant staff made the necessary repairs and restored phone service. The Town estimates that approximately 5,000 gallons was released. Any flow that was not absorbed into the soil around the pump station went into a storm water management pond behind the facility.
8. NRO issued Warning Letters and a Notice of Violation for the aforementioned violations as follows: WL No. W2009-03-N-1017, issued March 12, 2009; NOV No. W2009-03-N-0011, issued April 13, 2009; NOV No. W2009-05-N-0011, issued May 19, 2009; NOV No. W2009-08-N-0009 issued August 26, 2009; and NOV No. W2009-10-N-0007.
9. The Town met with DEQ on October 7, 2009, to discuss the aforementioned violations. In addition, DEQ discussed the Town's current Inflow and Infiltration situation. The Town stated that approximately ten percent of the Town's sewer lines have been replaced or re-lined. The Town also informed DEQ that during significant rains, the upgraded Plant does experience high flows.
10. The Town's Discharge Monitoring Reports indicate that it discharged treated wastewater from the Plant everyday from January 1, 2009 to October 31, 2009.
11. Va. Code §62.1-44.5 states that "Except 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."
12. 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.
13. Va. Code §62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
14. The Department has issued no permits or certificates to the Town for the Plant, other than VPDES Permit No. VA0061590.
15. Mountain Run and the stormwater management pond referenced in this Order are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.

17. Based on the foregoing information collected by DEQ, the State Water Control Board concludes that the Town violated the following statutory and/or regulatory provisions:

- 9 VAC 25-31-50.A.1
- Va. Code §62.1-44.5
- VPDES Permit No. VA0061590, Part I, Section A.1
- VPDES Permit No. VA0061590, Part II, Section Q
- VPDES Permit No. VA0061590, Part II, Section F

18. In order for the Town to return to compliance, DEQ staff and representatives of the Town 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 Town, and the Town agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$13,550.00 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

The Town 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Town for good cause shown by the Town, 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 Town admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Town 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 Town 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 Town 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 Town 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 Town shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town 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 Town 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 Town. Nevertheless, the Town 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 Town 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
 - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Town.

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

And it is so ORDERED this 9th day of December, 2010.

Thomas A. Faha
Thomas A. Faha, Regional Director
Department of Environmental Quality

The Town of Culpeper voluntarily agrees to the issuance of this Order.

Date: 9/11/10 By: Jeffrey B. Muzzey, Town Manager
(Person) (Title)

COA

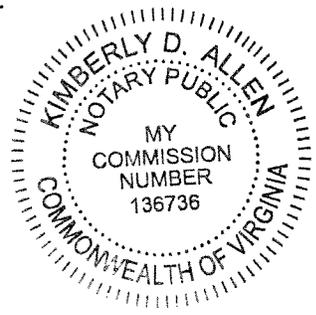
Commonwealth of Virginia
City/County of Culpeper

The foregoing document was signed and acknowledged before me this 11th day of August, 2010, by Jeffrey B. Muzzey who is Town Manager of the Town of Culpeper, on behalf of the Town of Culpeper.

Kimberly D. Allen
Notary Public
136736
Registration No.

My commission expires: 12/31/13

Notary seal:



APPENDIX A
SCHEDULE OF COMPLIANCE

The Town of Culpeper shall:

1. Repair or replace the liner of cell 1 of the equalization lagoon no later than July 15, 2011.