



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Allen J. Newman, P.E.  
Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Town of Pound FOR Pound Wastewater Treatment Plant VPDES Permit No. VA0061913**

#### **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 Pound, regarding the Town of Pound Wastewater Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation. This Order supersedes and terminates the Consent Order issued by the Board to the Town of Pound on July 23, 1996.

#### **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. "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.
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. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "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.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility", "Plant" or "WWTP" means the Pound Wastewater Treatment Plant, located at 11543 Old Mill Village Road, Pound, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Pound.
10. "I/I" means inflow/infiltration.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "O&M" means operations and maintenance.
13. "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.
14. "Permit" means VPDES Permit No. VA0061913, which was reissued under the State Water Control Law and the Regulation to the Town of Pound on April 25, 2014 and which expires on April 24, 2019.
15. "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.
16. "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.

17. “Pound” or “Town” means the Town of Pound, a political subdivision of the Commonwealth of Virginia. Pound is a “person” within the meaning of Va. Code § 62.1-44.3.
18. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. “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.
21. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
22. “TMDL” means Total Maximum Daily Load, the maximum amount of pollution a water body can assimilate without violating water quality standards.
23. “Va. Code” means the Code of Virginia (1950), as amended.
24. “VAC” means the Virginia Administrative Code.
25. “VPDES” means Virginia Pollutant Discharge Elimination System.
26. “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. Pound owns and operates the WWTP. The Permit allows Pound to discharge treated sewage and other municipal wastes from the WWTP to the Pound River, in strict compliance with the terms and conditions of the Permit.

2. The Pound River is located in the Tennessee-Big Sandy River Basin, Big Sandy River Subbasin, Section 4, Class IV, Special Standards none. This segment of the Pound River is listed as impaired for both recreation use and aquatic life use on the 303(d) report. The recreation use impairment is listed as E. coli, with the source identified as sewage discharges in unsewered areas. The aquatic life impairment is listed as benthic macroinvertebrate bioassessments, with the source identified as coal mining. A TMDL has not been developed for this segment of the river.
3. The Town of Pound submitted discharge monitoring reports (DMRs) for the Pound WWTP to DEQ's Southwest Regional Office (SWRO), including the following *relevant* data results.

Parameter	Observations - DMR Monitoring Period and Relevant Reported Monitoring Results						Legal Req.*
	12/13	02/14	03/14	10/14	04/15		
TSS average loading (kg/d)	99	316		121			57
TSS maximum loading (kg/d)	455	1247	93	578	111		85
TSS average concentration (mg/l)	43	79		51			30
TSS maximum concentration (mg/l)	191	303		236			45
CBOD5 maximum loading, Dec-May (kg/d)		129					71

4. The following "loss of solids" events and overflows occurred and were reported in October, November and December 2013, February, March, May, June, July, August, October and November, 2014, and February, June and July, 2015:
  - a) October 18-21, 2013 overflow of approximately 10,000 gallons of raw sewage from a manhole on the main interceptor above the influent pump station, due to only one operating pump in the pump station not being able to keep up with influent flows; a second pump was inoperable;
  - b) November 5, 2013 overflow of approximately 1,000 gallons of raw sewage from a manhole on the main interceptor above the influent pump station, due to a clogged pump in the pump station not being able to keep up with influent flows;
  - c) November 22, 2013 overflow of an unknown amount of raw sewage from a manhole on the main interceptor, above the influent pump station;
  - d) November 27, 2013 discharge of solids in the final effluent, due to heavy rainfall;
  - e) December 6, 2013 to December 10, 2013 discharge of solids in the final effluent, due to heavy rainfall;
  - f) February 3, 2014 discharge of solids in the final effluent, due to heavy rainfall;
  - g) March 4, 2014 discharge of solids in the final effluent due to heavy rainfall and snow melt;
  - h) May 2, 2014 discharge of solids in the final effluent due to increased influent flow from submerged manholes in the river.

- i) June 10, 2014 loss of solids due to a power outage;
  - j) July 14 and 19, 2014 discharges of solids in the final effluent due to heavy rainfall;
  - k) August 20, 21 and 23, 2014 discharges of solids in the final effluent due to heavy rainfall;
  - l) October 10-12 and 15, 2014 discharges of solids in the final effluent due to heavy rainfall;
  - m) November 5, 2014 discharge of solids in the final effluent due to heavy rainfall;
  - n) February 2, 2015 discharge of solids in the final effluent due to a broken line;
  - o) June 3, 2015 discharge of solids in the final effluent during draining of the chlorine contact tank; and
  - p) July 8 and 9, 2015 overflow of approximately 10,000 gallons at the influent pump station due to a software pump control problem.
5. During a DEQ staff site visit at the Pound WWTP on May 2, 2014, all three pumps in the influent pump station wet well were inoperable. Flow was being pumped into the WWTP by portable pump. This situation had apparently existed since September, 2013. A Certificate to Construct was issued by DEQ on October 7, 2014, with repair work on the influent pump station commencing on January 5, 2015. A Certificate to Operate for this repair work was issued by DEQ on October 5, 2015.
  6. The Permit expired on April 19, 2014, due to the Town not having the public notice published in a timely manner. The public comment period extended beyond the expiration date of the Permit. The Town discharged final effluent from the facility to state waters from April 20, 2014 to April 25, 2014 without a permit. The Permit was reissued April 25, 2014.
  7. Warning Letter No. W2014-12-S-1009 was issued December 29, 2014 for failure to submit a survey of all industrial users as required by the Permit. By letter dated December 30, 2014, the Town stated that no industrial users discharged to the Pound sewer collection system.
  8. DEQ SWRO issued a greater than 95% design capacity flow letter to the Town on April 17, 2015. A review of DMRs submitted indicated that monthly average flow values greater than or equal to 95 percent of design flow capacity of the Facility were recorded for three consecutive months (January, February and March, 2015). The monthly average flow value reported for the month of April, 2015 was also greater than 95 percent of design flow capacity of the Facility. The Town submitted a Preliminary Inflow and Infiltration Investigation document on September 9, 2014. A more complete Analysis of Initial Sanitary Sewer System Flow Monitoring Data report was received by DEQ July 1, 2015.
  9. The Permit, at Part I, Section A, sets forth the final effluent parameter permit limits.
  10. 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.”

11. The Permit, at Part II, Section F and Regulation 9 VAC 25-31-50 state that except in compliance with this permit, or another permit, 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 Permit, at Part II, Section Q states that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.
13. The Permit, at Part I, Section D states that within 180 days of the effective date of the Permit, the permittee shall submit to the DEQ ... a survey of all industrial users discharging to the Facility.
14. SWRO issued Warning Letter No. W2014-01-S-1007 on January 8, 2014 for overflows and loss-of-solids events and Warning Letter No. W2014-02-S-1001 on February 5, 2014 for DMR final effluent limits violations. NOV No. W2014-05-S-0001 was issued May 9, 2014 for DMR final effluent limits violations, loss-of-solids events, failure to properly operate and maintain pumps in the influent pump station and for discharging without a permit (the permit expired prior to reissuance). Warning Letter No. W2014-12-S-1009 was issued December 29, 2014 for failure to submit a survey of all industrial users.
15. Pound responded to the Warning Letters with written responses dated January 16, 2014, February 25, 2014 and December 30, 2014. The letter submitted December 30, 2014 stated that no industrial users discharged to the Pound sewer collection system. Pound responded to the NOV by meeting with DEQ staff on June 2, 2014 and October 28, 2014, and submitting both an initial Preliminary Engineering Report and a Preliminary Inflow and Infiltration Investigation on September 9, 2014. A more complete Preliminary Engineering Report and an Analysis of Initial Sanitary Sewer System Flow Monitoring Data were received by DEQ July 1, 2015. Pound submitted an application for Virginia Clean Water Revolving Loan Fund funding for upgrade of the WWTP and addition of a 750,000 gallon flow equalization basin on July 20, 2015. Schedules for both upgrades at the WWTP and I/I work are incorporated in Appendices A and B of this Order.
16. Pound's operating logs indicate that it discharged treated wastewater from the Plant every day from September 1, 2013 through July 31, 2015.
17. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
18. The Department has issued no permits or certificates to Pound other than VPDES Permit No. VA0061913.
19. The Pound River is a surface water located either wholly or partially within the Commonwealth and is a "state water" under State Water Control Law.

20. Based on the results of the May 2, 2014 site visit, meetings on June 2, 2014 and October 28, 2014, monthly DMRs received and documentation submitted January 16, 2014, February 25, 2014, September 9, 2014 and December 30, 2014, the Board concludes that Pound 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 WWTP and its collection system while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3), C(4), C(5) and C(6), above.
21. In order for Pound to complete its return to compliance, DEQ staff and representatives of Pound have agreed to the Schedules of Compliance, which are incorporated as Appendices A and B 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 of Pound, and the Town of Pound agrees to:

1. Perform the actions described in Appendices A and B of this Order; and
2. Pay a civil charge of \$7,770.00 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
April 1, 2016	\$971.25
July 1, 2016	\$971.25
October 1, 2016	\$971.25
January 1, 2017	\$971.25
April 1, 2017	\$971.25
July 1, 2017	\$971.25
October 1, 2017	\$971.25
January 1, 2018	\$971.25

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by the Town of Pound. Within 15 days of receipt of such letter, the Town of Pound shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

4. All payments 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

5. The Town of Pound 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, the Town of Pound shall be liable for attorneys' fees of 30% of the amount outstanding.

Both the Board and the Town of Pound understand and agree that this Order supersedes and terminates the Consent Order issued by the Board to the Town of Pound on July 23, 1996.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Pound for good cause shown by Pound, 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, Pound admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Pound 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. Pound 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 Pound 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. Pound 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. Pound shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Pound 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.

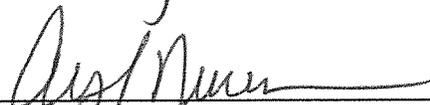
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Pound. Nevertheless, Pound agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Pound has completed all of the requirements of the Order;

- b. Pound 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 Pound.

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

And it is so ORDERED this 5<sup>th</sup> day of January, 2016.

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

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

Date: 26 Oct 2015 By: George E Dean MAYOR  
(Person) (Title)  
Town of Pound

Commonwealth of Virginia  
City/County of Wise

The foregoing document was signed and acknowledged before me this 26<sup>th</sup> day of  
October, 2015, by George E. Dean who is  
Mayor of the Town of Pound, on behalf of the Town.

Megan Courtney Koerner Sturgill  
Notary Public

7500021  
Registration No.

My commission expires: 8-31-2019

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law, the Regulation and the Permit, the Town of Pound agrees to implement the following actions, as they relate to the Virginia Clean Water Revolving Loan Fund project for upgrade of the WWTP and addition of a 750,000 gallon flow equalization basin, by the dates noted below:

1. Submit final design plans and specifications to DEQ.....November 15, 2016
2. Obtain DEQ Approval of Plans and Specifications\*.....January 15, 2017
3. Award Contract.....June 24, 2017
4. Issue Notice to Proceed and Begin Construction.....July 17, 2017
5. Achieve Substantial Completion.....April 18, 2018
6. Achieve final completion, obtain CTO and place new treatment units in service.....  
.....May 18, 2018
7. Notify DEQ in writing within ten days of completion of any item noted in Items 1 through 6 above.
8. Submit quarterly progress reports to the SWRO; the first report, for the reporting period October 1, 2016 through December 31, 2016, shall be due on January 10, 2017; subsequent quarterly reports shall be submitted in the same manner until the project is completed.
9. Unless otherwise specified in this Order, the Town of Pound shall submit all requirements of Appendix A of this Order to:

Ruby Scott  
Compliance Auditor  
VA DEQ – Southwest Regional Office  
355-A Deadmore Street  
Abingdon, Virginia 24210  
Phone: (276) 676-4882  
Fax: (276) 6764899  
[ruby.scott@deq.virginia.gov](mailto:ruby.scott@deq.virginia.gov)

\*\* Upon approval by DEQ, said documents/schedules shall become an enforceable part of this Consent Order, as stated in Item 12 of Section E, Administrative Provisions, above.

## APPENDIX B SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law and Regulation and the Permit, the Town of Pound agrees to implement the following actions, as they relate to the “Analysis of Initial Sanitary Sewer System Flow Monitoring Data for the Town of Pound, Virginia” dated June, 2015 and received by DEQ by electronic transmittal on July 1, 2015 (hard copy received July 2, 2015), by the dates noted below:

1. Complete any additional flow monitoring activities.....February 1, 2016
2. Perform cleaning and video inspection of areas identified.....May 1, 2016
3. Complete Inflow/Infiltration Preliminary Engineering Report (PER), including Project schedule, and submit to DEQ for review and approval.....June 1, 2016
4. Submit final design plans and specifications for the Project, and an application for issuance of a Certificate to Construct, to DEQ.....November 1, 2016
5. Obtain DEQ Approval of Plans and Specifications\* and issuance of a Certificate to Construct.....December 1, 2016
6. Advertise and complete Project per schedule included in I/I PER (Item 3, above).
7. Notify DEQ in writing within ten days of completion of any item noted in Items 1 through 6 above and items noted in the project schedule in the I/I PER (Item 3, above).
8. Submit quarterly progress reports to the SWRO; the first report, for the reporting period January 1, 2016 through March 31, 2016, shall be due on April 10, 2016; subsequent quarterly reports shall be submitted in the same manner until the project is completed.
9. All reports submitted to the SWRO shall be mailed to the attention of Ruby Scott, Compliance Auditor, 355-A Deadmore Street, Abingdon, VA 24210.

\* Upon approval by DEQ, said documents/schedules shall become an enforceable part of this Consent Order, as stated in Item 12 of Section E, Administrative Provisions, above.