# *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*
SOUTHWEST REGIONAL OFFICE
355-A Deadmore Street, Abingdon, Virginia 24210
(276) 676-4800 Fax (276) 676-4899
www.deq.virginia.gov

Douglas W. Domenech
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 Coeburn
## FOR
## Sheffield Acres Sewage Treatment Plant
## VPDES Permit No. VA0061743

### 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 Coeburn, regarding the Sheffield Acres Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law, the applicable regulation and VPDES Permit No. VA0061743.

### 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. "Coeburn" or "Town" means the Town of Coeburn, a political subdivision of the Commonwealth of Virginia. Coeburn is a "person" within the meaning of Va. Code § 62.1-44.3.

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 "STP" means the Sheffield Acres Sewage Treatment Plant located on Route 72, approximately 3 miles south of Coeburn, at Flatwoods, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Sheffield Acres Residential Development.

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. VA0061743, which was reissued under the State Water Control Law and the Regulation to the Town of Coeburn on July 1, 2011 and which expires on June 30, 2016.

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. "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. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.

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. Coeburn owns and operates the Plant. The Permit allows Coeburn to discharge treated sewage and other municipal wastes from the Plant, to Corder Branch, in strict compliance with the terms and conditions of the Permit.

2. Corder Branch is located in the Tennessee-Big Sandy River Basin, Clinch River Subbasin. It is classified as Section 2, Class IV, Special Standards: None. It is a Tier 1 waterbody and is considered intermittent, with a 7Q10 low flow value of 0.0 MGD. Corder Branch is not listed on the current 303(d) list.

3. SWRO issued NOV No. W2010-02-S-0001 on February 24, 2010 for exceedance of the Permit's final effluent limit for BOD5 average loading for January, 2010 and for overflows (both reported and an unreported) during October and November, 2009. The facility also had average monthly flow values exceeding 95% of the design capacity of the Facility for three consecutive months (March through September 2009). The Facility had initially exceeded the Permit's 95% flow policy for the months of December, 2008 and January and February, 2009. Coeburn responded to the initial exceedance of the Permit's 95% flow policy by submittal of a plan of action to DEQ on May 14, 2009 to address the flow issue.

4. NOV No. W2010-12-S-0001, issued December 20, 2010, cited DMR effluent limit violations for BOD5 average concentration and average loading for August, 2010, and for ammonia average and maximum concentrations for September and October, 2010. The NOV also cited two overflows and noted an additional instance of exceedance of the Permit's 95% flow policy (August, September and October, 2010).

5. Warning Letter No. W2011-05-S-1006, issued May 10, 2011, cited DMR effluent limit violations for BOD5 average loading and total suspended solids average concentration and average and maximum loading values, all for March, 2011. Warning Letter No. W2011-10-S-1005, issued October 31, 2011, cited DMR effluent limit violations for BOD5 and total suspended solids average loading values for September, 2011 and ammonia average and maximum concentrations for May, 2011. Warning Letter No. W2012-04-S-1003, issued April 9, 2012, cited DMR effluent limit violations for BOD5 average and maximum concentrations and loadings, and ammonia maximum concentration, all during February, 2012. Warning Letter No. W2012-07-S-1003, issued August 1, 2012, cited DMR effluent limit violations for total suspended solids maximum concentration and ammonia average and maximum concentrations for June, 2012. It also cited failure to submit monthly effluent E. coli monitoring data, as requested by DEQ by letter dated March 14, 2012.

6. Warning Letter No. W2012-10-S-1014, issued November 1, 2012, cited DMR effluent limit violations for chlorine instantaneous technical minimum concentration for August, 2012, and ammonia average and maximum concentrations for September, 2012. Also noted in this WL was the failure to properly conduct Special Monitoring (weekly E.coli monitoring of final effluent, with recordation of date and time of sampling) for the month of September, 2012.

7. SWRO issued NOV No. W2013-02-S-0002 on February 13, 2013, which cited a total suspended solids average concentration violation in January, 2013. It also noted the failure to properly conduct Special Monitoring (weekly E.coli monitoring of final effluent, with recordation of date and time of sampling) for the months of September, October and November, 2012, and failure to submit a plan to improve final effluent disinfection at the Facility by November 22, 2012, as requested by letter dated August 23, 2012.

8. Coeburn responded to the WLs and NOVs, either in writing or by meeting with DEQ staff. The Sheffield Acres Facility consists of dual train extended aeration package treatment plants that are old, well beyond any expected useful life. Coeburn has organized and/or participated in meetings with other possible participants and governmental agencies regarding the Route 72 Interceptor Project on September 15, 2010, May 31, 2011 and March 12, 2012. The Interceptor Project will allow Coeburn to connect to a VPDES major municipal collection system and close the Sheffield Acres STP. Coeburn applied for Virginia Revolving Loan Fund monies for the Interceptor Project in 2011.

9. Coeburn's operating logs indicate that it discharged treated wastewater from the Plant every day from October 1, 2009 through January 31, 2013.

10. VPDES Permit No. VA0061743, Part I, Section A, sets forth the final effluent parameter permit limits.

11. VPDES Permit No. VA0061743, Part II, Sections F, G, H and I set forth reporting requirements for unauthorized and for unusual and extraordinary discharges and other noncompliance. Part II, Section Q sets forth operation and maintenance requirements for facilities used to obtain compliance with the Permit.

12. 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."

13. 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.

14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

15. The Department has issued no permits or certificates to Coeburn other than VPDES Permit No. VA0061743.

16. Corder Branch is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

17. Based on the results of DMRs and accompanying documentation submitted by Coeburn for the October, 2009 through January, 2013 monitoring periods, a technical inspection conducted November 3, 2009, meetings held with the Town September 15, 2010, May 31, 2011, March 12, 2012 and most recently, February 27, 2013, and documentation submitted on March 8, 2013, the Board concludes that Coeburn has violated the Permit, Va. Code § 62.1-44.5 and Regulation 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, by failing to comply with Permit effluent limitations, reporting

requirements and by allowing unpermitted discharges from the treatment system, as described in paragraphs C(3) through C(7), above.

18. On February 27, 2013, Department staff met with representatives of Coeburn to discuss violations cited in the February 13, 2013 NOV. The Town's written response was received March 8, 2013.

19. In order for Coeburn to return to compliance, DEQ staff and representatives of Coeburn have agreed to the Schedule of Compliance for construction of the Rt. 72 Interceptor Project, connection of the Sheffield Acres collection system to the Coeburn-Norton-Wise Regional Wastewater Treatment Plant's collection system via the interceptor, and closure of the Sheffield Acres STP. This Schedule of Compliance is incorporated as Appendix A of this Order. Virginia Revolving Loan Fund money, in the amount of $2,094,346.00, has been authorized for construction of the Route 72 Interceptor Project, which will eliminate the Sheffield Acres discharge.

## SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code § 62.1-44.15, the Board orders the Town of Coeburn, and the Town of Coeburn agrees to perform the actions described in Appendix A of this Order.

## SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Coeburn for good cause shown by Coeburn, 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 No.W2010-02-S-0001, dated February 24, 2010, NOV No. W2010-08-S-0002, dated August 30, 2010, NOV No. W2010-12-S-0001, dated December 20, 2010 and NOV No. W2013-02-S-0002, dated February 13, 2013 and in Warning Letter No. W2011-10-S-1005, dated October 31, 2011, Warning Letter No. W2012-04-S-1003, dated April 9, 2012, Warning Letter No. W2012-07-S-1003, issued August 1, 2012 and Warning Letter No. W2012-10-S-1014, issued November 1, 2012. 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, Coeburn admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Coeburn 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. Coeburn 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 Coeburn 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. Coeburn 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. Coeburn shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Coeburn 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 Coeburn. Nevertheless, Coeburn 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 Coeburn has completed all of the requirements of the Order;

    b. Coeburn 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 Coeburn.

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

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, Coeburn voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7th day of October, 2013.

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

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

Date: July 8, 2013 By: Jess R. Powers, Mayor
(Person) (Title)
Town of Coeburn

Commonwealth of Virginia
City/County of Wise

The foregoing document was signed and acknowledged before me this _____ day of

7-8-13, 2013, by Jess Powers who is

Mayor (Title) of the Town of Coeburn on behalf of the Town.

Christy L. McCoy
Notary Public

#360224
Registration No.

My commission expires: 1-31-2017

Notary seal:

CHRISTY L. McCOY
NOTARY PUBLIC
REG. #360224
MY COMMISSION EXPIRES
1-31-17
COMMONWEALTH OF VIRGINIA

**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 Town of Coeburn agrees to implement the following actions, as they relate to the Route 72 Interceptor Project, by the dates noted below:

1. Obtain Water Quality permits required for construction.....May 31, 2013

2. Submit final design plans and specifications for pump station.....June 15, 2013

3. Obtain DEQ Approval of Plans and Specifications for the entire Project*.....July 1, 2013

4. Advertise Project. ..... July 8, 2013

5. Issue Notice to Proceed .....October 8, 2013

6. Achieve substantial completion.....April 1, 2014

7. Achieve final completion, obtain CTO and place interceptor in service.....May 1, 2014

8. Close the Sheffield Acres STP, as required by VPDES Permit No. VA0061743, Part I, Section B(12), per the closure plan contained in the approved plans and specifications (Item 3 above).....November 1, 2014

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 July 1, 2013 through September 30, 2013, shall be due on October 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.

* 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.