COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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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
COUNTY OF CULPEPER
FOR
GREENS CORNER WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0092002

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 County of Culpeper, regarding the Greens Corner 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. "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.

2. "2012 Permit" means VPDES Permit No. VA0092002, which was issued under the State Water Control Law and the Regulation to County of Culpeper on April 24, 2012, and which expires on April 23, 2017.

3. "Ammonia as N" means the concentration of ammonia reported in mg of Nitrogen per litre of water (mg/L).

4. "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.

5. "CBOD5" means carbonaceous biochemical oxygen demand.

6. "Culpeper" means the County of Culpeper, a political subdivision of the Commonwealth of Virginia. Culpeper is a "person" within the meaning of Va. Code § 62.1-44.3.

7. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

8. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

9. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10

10. "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.

11. "DMR" means Discharge Monitoring Report.

12. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

13. "Facility" or "Plant" means the Greens Corner Wastewater Treatment Plant, a 0.1 MGD Membrane Bioreactor package plant, located at 16540 Greens Corner Road, Culpeper, Virginia, which treats and discharges treated sewage and other municipal wastes, for the students and staff of the Eastern View High School.

14. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

15. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

16. "O&M" means operations and maintenance.

17. "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.

18. "Permit" means VPDES Permit No. VA0092002, which was issued under the State Water Control Law and the Regulation to County of Culpeper on April 4, 2007, modified on February 27, 2008, and which expired on April 3, 2012.

19. "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.

20. "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.

21. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

22. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

23. "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.

24. "TKN" means Total Kjeldahl Nitrogen.

25. "Va. Code" means the Code of Virginia (1950), as amended.

26. "VAC" means the Virginia Administrative Code.

27. "VPDES" means Virginia Pollutant Discharge Elimination System.

28. "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. Culpeper owns and operates the Plant. The Permit allows Culpeper to discharge treated sewage and other municipal wastes from the Plant, to an unnamed tributary of Mountain Run, in strict compliance with the terms and conditions of the Permit.

2. Mountain Run is located in the Rappahannock River Basin. Mountain Run is listed in DEQ's 2010 305(b) report as impaired for: recreational use due to E. coli bacteria; aquatic life use due to a poor benthic macro-invertebrate community; and fish consumption use due to elevated levels of polychlorinated biphyenls (PCBs) in fish tissue.

3. In submitting its DMRs, as required by the Permit, Culpeper has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for Ammonia as N and TKN, for the months of December 2011 and January 2012. Culpeper indicated that it believed the exceedances were related to bringing the Plant back in operation and re-establishing nitrification during the cold weather months after it had been off-line for repairs.

4. NRO issued a Warning Letter, WL No. W2012-02-N-1019 on February 28, 2012, and a Notice of Violation, NOV No. W2012-03-N-0006, on March 21, 2012, for the Ammonia as N and TKN exceedances during December 2011 and January 2012.

5. On March 16, 2012, Culpeper responded to the Warning Letter. The response letter indicated that it believed the exceedances were related to bringing the Plant back in operation and re-establishing nitrification during the cold weather months after it had been off-line from October 25, 2011 to December 4, 2011, for repairs.

6. On April 25, 2012, Culpeper responded to the Notice of Violation. The response letter restated that Culpeper believed that the exceedances were related to the difficultly of re-establishing nitrification during the cold weather months after the Plant had been off-line for repairs. The letter also stated that due to low flow the Plant had only discharged a combined total of twenty-six days during the December 2011 and January 2012 monitoring periods.

7. The NOV response letter also stated that Culpeper had entered into a Comprehensive Water and Sewer Agreement (Agreement) with the Town of Culpeper in March 2012. The Agreement puts forth the plan to connect the sanitary sewer collection area serviced by the Plant to the Town of Culpeper's sanitary sewer collection system and Culpeper would be able to decommission the Facility.

8. On May 1, 2012, Department staff met with representatives of Culpeper to discuss the violations, including Culpeper's written responses. Subsequently, Culpeper submitted a copy of the Agreement and the Town of Culpeper's response to Culpeper's request to

construct the sewer connection. The planned connection would complement the existing water connection serviced by the Town of Culpeper.

9. Culpeper's operating logs indicate that it discharged treated wastewater from the Plant twenty-six (26) days from December 6, 2011 to January 24, 2012.

10. In submitting its DMR, as required by the Permit, Culpeper has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for CBOD5 for the month of June 2012. Culpeper indicated that it believed the exceedance was an anomaly and cannot be explained.

11. NRO issued a Notice of Violation, NOV No. W2012-08-N-0004, on August 22, 2012, for the CBOD5 exceedance during June 2012.

12. On August 28, 2012, Culpeper responded to the NOV. The response letter indicated that it believed the exceedance was an anomaly and that the remaining samples in the monitoring period were below qualification levels and in compliance with the limits set forth in the Permit.

13. 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."

14. 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.

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

16. Mountain Run 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 the May 1, 2012 meeting, and the documentation submitted on March 16, 2012, April 25, 2012, and August 28, 2012, the Board concludes that Culpeper 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 Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(3) and C(10), above.

18. Culpeper has submitted documentation that verifies that the violations as described in paragraphs C(3) and C(10), above, have been corrected.

19. In order for Culpeper to maintain compliance, DEQ staff and representatives of Culpeper 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 Culpeper, and Culpeper 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 Culpeper for good cause shown by Culpeper, 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, Culpeper admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Culpeper 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. Culpeper 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 Culpeper 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. Culpeper 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. Culpeper shall demonstrate that such

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

b. Culpeper 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 Culpeper.

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

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, Culpeper voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14th day of March, 2013.

Thomas A. Faha

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

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County of Culpeper voluntarily agrees to the issuance of this Order.

Date: Nov. 2, 2012 By: Frank T. Bossio, County Administrator
(Person) (Title)
County of Culpeper

Commonwealth of Virginia
City/County of Culpeper

The foregoing document was signed and acknowledged before me this 2nd day of November, 2012, by Frank T. Bossio who is County Administrator of County of Culpeper, on behalf of the County.

Deborah C Hoffman
Notary Public

286623
Registration No.

My commission expires: December 31, 2016

Notary seal:

Deborah C Hoffman
Commonwealth of Virginia
Notary Public
Commission No. 286623
My Commission Expires 12/31/2016

APPENDIX A
SCHEDULE OF COMPLIANCE

Culpeper shall:

1. Within 30 days of the execution of this Order, submit to DEQ, for review and approval, a plan and schedule to maintain compliance with the permit limits. Once approved the schedule shall be enforceable under this Order.

DEQ Contact

Unless otherwise specified in this Order, Culpeper shall submit all requirements of Appendix A of this Order to:

Department of Environmental Quality
Northern Regional Office
13901 Crown Court
Woodbridge, VA 22193
Attn: Enforcement