



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 THE LEE COUNTY PUBLIC SERVICE AUTHORITY FOR HICKORY FLATS WWTP VPDES Permit No. VA0089397

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 Lee County Public Service Authority, regarding the Hickory Flats 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.
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 Hickory Flats Wastewater Treatment Plant located on Treatment Plant Road off U.S. Route 58, east of Jonesville, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Lee County Public Service Authority service area.
10. “Lee County PSA” or “PSA” means The Lee County Public Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* The Lee County Public Service Authority is a “person” within the meaning of Va. Code § 62.1-44.3.
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. VA0089397, which has been reissued under the State Water Control Law and the Regulation to the Lee County Public Service Authority, with an effective date of November 27, 2011 and which expires on November 26, 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. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
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. “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 Lee County Public Service Authority owns and operates the Hickory Flats Wastewater Treatment Plant. The Permit allows the PSA to discharge treated sewage and other municipal wastes from the Plant, through outfall No. 001 only, to the Powell River, in strict compliance with the terms and conditions of the Permit.
2. The Powell River is located in the Tennessee-Big Sandy River Basin. This segment of the Powell River is listed in DEQ’s 305(b) report as impaired for E. coli, and as not supporting the recreation use goal. The source of the impairment is listed as sewage discharges in unsewered areas and unrestricted cattle access.

3. SWRO issued Warning Letter No. W2009-10-S-1011 on November 2, 2009 for exceedances of the Permit's final effluent limits for TKN in September, 2009.
4. SWRO issued Warning Letters for outstanding March 23, 2010 compliance inspection items regarding operation and maintenance of WWTP treatment units as follows: WL No. W2010-08-S-1005, issued August 18, 2010, and WL No. W2010-10-S-1004, issued October 26, 2010.
5. SWRO issued Warning Letter No. W2011-03-S-1010 on March 28, 2011 for failure to submit sludge DMRs and an incomplete final effluent DMR submittal for the month of February, 2011. An amended DMR for February, 2011 was received April 6, 2011. Sludge DMRs were received April 25, 2011. Also, the application for reissuance of the Permit, due May 30, 2011, was received July 11, 2011.
6. SWRO issued Notices of Violation for outstanding compliance inspection items (repair or replacement of all floating mechanical mixers in the aerobic digesters, repair or replacement of UV disinfection module Nos. 3 and 5, and submittal of an O&M Manual revision regarding manual operation of the UV units) as follows: NOV No. W2011-01-S-0001, issued January 18, 2011; NOV No. W2011-07-S-0002, issued July 19, 2011; and NOV No. W2011-10-S-0001, issued October 5, 2011.
7. NOV No. W2011-01-S-0001, issued January 18, 2011, also cited dissolved oxygen minimum concentration and TKN maximum concentration effluent limit violations for the month of August, 2010, a TKN average concentration violation for September, 2010, and four overflows from the PSA's treatment system reported during November, 2010 (one of which reached state waters).
8. In response to odor complaints received regarding the WWTP, DEQ SWRO staff conducted recon inspections at the Facility on May 16, 2011 and May 26, 2011. On July 7, 2011, SWRO staff conducted a compliance inspection at the Facility. In addition to the items already cited, other items noted as needing correction included: a) repair and reinstallation of Pump No. 1 at the Litton Pump Station; b) repair of the grinder at the Litton Pump Station; c) installation of a muffler on the air blower located at the grit chamber; d) repair of Aerator No. 3 in SBR No. 2; e) exhausting all efforts to keep foul odors from occurring at the WWTP; and f) complying with staffing requirements for the WWTP per the facility O&M Manual. Dewatering and disposal of sludge present in the digesters, another item cited as needing correction, will be accomplished prior to installation of diffusers in each digester as part of the new aeration system (floating aerators are being replaced with a diffused aeration system).
9. NOV No. W2011-07-S-0002, issued July 19, 2011, also cited an E. coli effluent limit violation in May, 2011, TKN average and maximum concentration effluent limit violations in June, 2011, one overflow during January, 2011, two overflows each during April and June, 2011 (only one of which reached state waters), and additional items a) through f) found during the July 11, 2011 compliance inspection, as listed in No. 8, above.

10. NOV No. W2011-10-S-0001, issued October 5, 2011, also cited TKN average and maximum concentration effluent limit violations for the months of July and August, 2011, one overflow reported during August, 2011 (which did not reach state waters), and additional items a) through f) found during the July 11, 2011 compliance inspection, as listed in No. 8, above.
11. Although not cited in an NOV, an overflow in August, 2010 did reach state waters, as did an overflow in November, 2011. In addition, the PSA reported a TKN average concentration violation for the month of September, 2011, which was also not cited in an NOV.
12. DEQ SWRO staff conducted compliance inspections at the Facility on September 7, 2011 and October 12, 2011. In addition to items cited above, it was requested that all floating trash be removed from the surface of the effluent flow equalization basin and that any solids buildup in the effluent flow equalization basin also be removed.
13. The PSA's consultant responded to Notice of Violation NOV No. W2011-01-S-0001, issued January 18, 2011, by letter dated March 22, 2011, stating that a revised O&M Manual, reflecting manual operation of the UV controller, would be submitted to DEQ, and that UV disinfection modules 3 and 5 had been repaired. The letter also stated that plans and specifications for a new aeration system in the digesters at the Facility had been completed and submitted to DEQ for approval, and that funding for the project was being secured from EPA.
14. On August 15, 2011, Department staff met with representatives of the Lee County PSA to discuss the violations, including the PSA's consultant's written response. The PSA informed DEQ that EPA funding of a new aeration system in the digesters at the Facility would not be forthcoming.
15. On July 18, 2011, DEQ Central Office staff received a FY2012 Application for Virginia Clean Water Revolving Loan Fund ("VRLF") funding of a new aeration system in the digesters at the Facility. A Preliminary Engineering Report ("PER") for the project was received by DEQ on October 24, 2011.
16. The PSA's operating logs for the Hickory Flats WWTP indicate that it discharged treated wastewater from the Plant every day from September 1, 2009 through October 31, 2011.
17. 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."
18. 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.

19. The Permit, at Part II, Section F states 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, or otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.
20. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
21. The Department has issued no permits or certificates for the Hickory Flats WWTP to the PSA other than VPDES Permit No. VA0089397.
22. The Powell River is a surface water located wholly or partially within the Commonwealth and is a “state water” under State Water Control Law.
23. Based on the results of DMRs and accompanying documentation submitted by the PSA for the September, 2009 through August, 2011 monitoring periods, the results of the March 23, 2010 compliance inspection and follow-up compliance and recon inspections as noted above, the August 15, 2011 meeting, and documentation submitted on March 22, 2011, the Board concludes that the Lee County PSA 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, by failing to comply with Permit effluent limitations, O&M requirements, reporting requirements and deadlines and by allowing unpermitted discharges from the treatment system, as described in paragraphs C(3) through C(11), above.
24. Although the PSA and its consultant have responded in writing to Warning Letters and NOVs, and some repairs were made, with the problems later reoccurring, all of the items noted above remain outstanding.
25. In order for the PSA to return to compliance, DEQ staff and representatives of the PSA 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 Lee County PSA, and the Lee County PSA agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$14,125.00 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 Lee County PSA shall include its Federal Employer Identification Number (FEIN) (04-3649461) 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 Lee County PSA, for good cause shown by the Lee County PSA, 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 and NOV No. W2011-01-S-0001, issued January 18, 2011; NOV No. W2011-07-S-0002, issued July 19, 2011; and NOV No. W2011-10-S-0001, issued October 5, 2011. 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 Lee County PSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Lee County PSA 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 Lee County PSA 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 Lee County PSA 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 Lee County PSA 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 Lee County PSA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Lee County PSA 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.

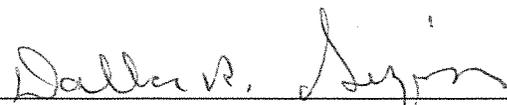
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Lee County PSA. Nevertheless, the Lee County PSA agrees to be bound by any compliance 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 Lee County PSA has completed all of the requirements of the Order;
 - b. The Lee County PSA 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 Lee County PSA.

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

And it is so ORDERED this 10th day of April, 2012.



Dallas R. Sizemore, Regional Director
Department of Environmental Quality

The Lee County Public Service Authority voluntarily agrees to the issuance of this Order.

Date: 2-6-12 By: James Parsons Director
(Person) (Title)
The Lee County Public Service Authority

Commonwealth of Virginia
City/County of Washington

The foregoing document was signed and acknowledged before me this 6 day of
February, 2012, by James Parsons who is
Director of The Lee County Public Service Authority on behalf of

The Lee County Public Service Authority.

Christi A. Clark
Notary Public
252697
Registration No.

My commission expires: 02-28-13

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

APPENDIX A

In order to comply with the provisions of the State Water Control Law and Regulations and the Permit, the Lee County Public Service Authority agrees to implement the following actions by the dates noted below:

1. Obtain DEQ approval of Phase I Plans and Specifications.....February 10, 2012
2. Advertise Phase I Sludge Digester aeration systemFebruary 12, 2012
3. Submit Plans and Specifications to DEQ for Phase II replacement of the Litton Pump Station, replacement of Aerator No. 3 in SBR No. 2, for an odor control system and miscellaneous equipmentMarch 16, 2012
4. Obtain DEQ Approval of Phase II Plans and Specifications* April 13, 2012
5. Advertise Phase II replacement of the Litton Pump Station, replacement of Aerator No. 3 in SBR No. 2, for an odor control system and miscellaneous equipment April 15, 2012
6. Issue Notice to Proceed for Phase I project..... May 7, 2012
7. Issue Notice to Proceed for Phase II project..... June 25, 2012
8. Complete construction and installation of the new diffused air system in the aerobic digesters May 31, 2013
9. Complete repair or replacement of UV disinfection module Nos. 3 and 5..... May 31, 2013
10. Complete repairs of items a) through g) below no later than May 31, 2013
 - a) repair and reinstall Pump No. 1 at the Litton Pump Station;
 - b) repair the grinder at the Litton Pump Station;
 - c) install a muffler on the air blower located at the grit chamber;
 - d) replace the malfunctioning Aerator No. 3 in SBR No. 2 while the pump is under warranty;
 - e) exhaust all efforts to keep foul odors from occurring at the WWTP;
 - f) comply with staffing requirements for the WWTP per the Facility’s approved O&M Manual; and,
 - g) remove all floating trash from the surface of, and any solids buildup in, the effluent flow equalization basin.

11. Submit to DEQ revisions to the Facility’s O&M Manual to address the changes in treatment systems required above no later thanSeptember 30, 2013
12. Inspect, make any needed repairs and/or replacements of pumps and equipment, and of any alarm system equipment, and submit written certification to DEQ that all such equipment associated with all pump stations within the PSA’s sewer system is operational and in a good state of repair, no later than May 31, 2013
13. Submit to DEQ a user fee schedule and operating budget for each of the next five years, beginning with the County’s 2012-2013 Fiscal Year, each year’s submittal due no later than June 30, 2012 - 2016
14. Have comprehensive, independent technical inspections of the WWTP conducted by an independent third party each year for the next five years (2012 – 2016); each inspection shall evaluate the effectiveness of the operation and maintenance of the WWTP and associated collection system; each report shall include a list of deficiencies found during the respective inspection, with a schedule for correction of those deficiencies; reports of the annual inspections shall be submitted to DEQ each year no later thanJuly 31, 2012 – 2016
15. Submit the name and qualifications of the independent firm that has been selected to perform the annual technical inspections for review and approval no later thanApril 15, 2012
16. Notify DEQ in writing within ten days of completion of any item noted in Items 1 through 7 above.
17. Submit quarterly progress reports to the SWRO; the first report, for the reporting period January 1, 2012 through March 31, 2012, shall be due on April 10, 2012; subsequent quarterly reports shall be submitted in the same manner until the project is completed.
18. All reports submitted to the SWRO shall be mailed to the attention of Ruby Scott, Compliance Auditor, P. O. Box 1688, Abingdon, VA 24212.

* 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.