

ENTERED



COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO THE CITY OF MARTINSVILLE FOR THE MARTINSVILLE WATER TREATMENT PLANT Unpermitted Discharge

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 City of Martinsville, regarding the Martinsville Water Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable 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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
3. "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.

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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. "Facility" or "Plant" means the Martinsville Water Treatment Plant located at 302 Clearview Drive, Martinsville, Virginia, which supplies drinking water for the residents and businesses of the City of Martinsville.
9. "The City" means the City of Martinsville, a political subdivision of the Commonwealth of Virginia. The City is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "O&M" means operations and maintenance.
12. "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.
13. "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.
14. "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.

15. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. "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.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. The City owns and operates the Plant for the purpose of treating and providing drinking water to the residents and businesses of the City.
2. Jones Creek and its tributaries are located in the Roanoke and Yadkin River Basins. Jones Creek is listed in DEQ's 2010 305(b)/303(d) *Water Quality Assessment Integrated Report* as impaired for E. Coli.
3. On October 16, 2011, the Facility had a release of fluorsilicic acid. The release was reported to the Department on October 17, 2011.
4. On October 18, 2011, Department staff responded to a reported fish kill on Jones Creek in Martinsville, Virginia. Department staff observed a fish kill, estimated using American Fisheries Society methods, of 4,445 fish. The fish kill was observed originating from the storm drain outfall at the Facility, and continuing downstream to the confluence of Jones Creek and Beaver Creek covering approximately 3700 meters (2.3 miles).
5. The observed fish kill coincides in time and location with the October 16, 2011 release of fluorsilicic acid, which entered Jones Creek from the storm drain at the Facility.

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6. On December 6, 2011, the City submitted a document that described the incident that resulted in the unpermitted discharge. Fluorosilicic acid (“the Acid”) is stored in a 6,000 gallon above ground storage tank. The tank is situated inside a containment area, as required. A transfer pump, situated inside the containment area, is used to move the Acid from the storage tank to the water purification process. Due to the extremely corrosive nature of the Acid, the transfer pump failed resulting in a release of the Acid into the containment area. The containment area contains a 2 inch valve which allows for the draining of the containment area when rain water has accumulated. Prior to October 16, 2011, the valve had been opened and inadvertently left open. Consequently, the Acid spilled onto the ground and flowed off-site and into state waters. The submittal also described the spill response initiated by the City, the remediation actions implemented to clean-up the spill, and the review and modification of the City’s operations and maintenance procedures at the Facility to ensure that an unpermitted discharge does not occur in the future.
7. 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, or otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.”
8. 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, 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. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
9. The Department has issued no permits or certificates to the City of Martinsville for the Martinsville Water Treatment Plant.
10. Jones Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
11. Based on the City’s report of October 17, 2011 detailing an October 16, 2011 release, the results of the October 18, 2011 fish kill investigation, and the documentation submitted on December 6, 2011, the Board concludes that the City has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging fluorosilicic acid from the Facility into Jones Creek which resulted in a fish kill, as described in paragraph C(3) through C(6), above.
12. The City has submitted documentation that verifies that the violation as described in paragraphs C(3) through C(6), above, has been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the City of Martinsville, and the City of Martinsville agrees to:

1. Pay a civil charge of **\$13,500** within 30 days of the effective date of the Order in settlement of the violations cited in this Order;
2. Reimburse DEQ **\$2,001.21** for DEQ fish kill investigative costs within 30 days of the effective date of the Order;
3. Reimburse DGIF **\$948.50** for DGIF fish replacement costs within 30 days of the effective date of the Order.

Payment shall be made by separate checks, certified checks, money orders or cashier's checks payable to:

1. the "Treasurer of Virginia" for the civil charge and for the DEQ fish kill investigative costs (one check);
2. the "Department of Game and Inland Fisheries" for the DGIF fish replacement costs (one check);

and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The City of Martinsville shall include its Federal Employer Identification Number (FEIN) 54-6001415 with the payments and shall indicate that the payment of the civil charge is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF); that payment of the DEQ fish kill investigative costs is for reimbursement of DEQ expenditures; and that the payment of the DGIF fish replacement costs is for the Department of Game and Inland Fisheries.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the City for good cause shown by the City, 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.

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2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the City admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The City consents to venue in the Circuit Court of the City of Martinsville for any civil action taken to enforce the terms of this Order.
5. The City 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 City 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 City 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 City shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City 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

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- 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 City. Nevertheless, the City 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 City has completed all of the requirements of the Order;
 - b. The City 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 City.

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

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representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, the City voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 27th day of June, 2012.

Robert J. Weld, Regional Director
Department of Environmental Quality

The City of Martinsville voluntarily agrees to the issuance of this Order.

Date: 3/2/2012 By: Leon Towarnicki, Interim City Manager
Leon Towarnicki
City of Martinsville

Commonwealth of Virginia

City/County of Martinsville

The foregoing document was signed and acknowledged before me this 2nd day of March, 2012, by Leon Towarnicki who is the Interim City Manager of the City of Martinsville on behalf of the Council.

Notary Public

158349

Registration No.

My commission expires: 5-31-15

Notary seal:

