



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MASSANUTTEN PUBLIC SERVICE CORPORATION VPDES Permit No. VA0024732

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 Massanutten Public Service Corporation, regarding the Facility, for the purpose of resolving certain violations of the State Water Control Law, the Permit and the 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. "Facility" means the Massanutten Public Service Corporation sewage treatment plant located at 1550 Resort Drive, McGaheysville, Virginia which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Massanutten resort.
9. "Massanutten" means Massanutten Public Service Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Massanutten 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. "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.
12. "Permit" means VPDES Permit No. VA0024732 which was issued under the State Water Control Law and the Regulation to Massanutten on December 1, 2010 and expires on November 30, 2015.
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 the Virginia Pollutant Discharge Elimination System.
21. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: The Board's Findings of Facts and Conclusions of Law

1. Massanutten owns and operates the Facility located in Rockingham County, Virginia which serves a resort, time share condominiums and homes having approximately 2112 connections. Massanutten is subject to the Permit which authorizes Massanutten to discharge treated wastewater to Quail Run, in strict compliance with the terms and conditions of the Permit.
2. Quail Run is located in the Shenandoah River subbasin and the Potomac River Basin. Quail Run is listed as Tier 1 waters. Quail Run is listed in DEQ's 305(b) report as impaired from the headwaters downstream to its confluence with Boone Run for recreational use due to wildlife other than waterfowl, non-point source pollution and agriculture. Quail Run is also listed for benthic impairment from the headwaters downstream to the Facility's outfall due to natural conditions. Quail Run is also listed as having a benthic impairment from the Facility's outfall downstream to Boone Run due to municipal point source discharges. This impairment is addressed in the EPA approved Quail Run Benthic TMDL.

Bonnie Brook is located in the Shenandoah River subbasin and the Potomac River Basin. Bonnie Brook is listed as Tier 1 waters. Bonnie Brook was not assessed for impacts as part of DEQ's 305(b) report.

3. On May 17, 2014, DEQ received a report from Massanutten regarding a discharge of approximately 10,000 gallons of wastewater from a force main located at the Alleghany lift station. Originally, Massanutten reported the overflow as not reaching State waters.
4. On May 19, 2014, DEQ received a video recording of the May 17, 2014 sewage overflow flowing across the backyard of a homeowner.
5. On May 19, 2014, DEQ staff conducted an investigation of the sewage overflow report. During the investigation, DEQ staff noted evidence of unpermitted discharges of untreated wastewater from a break in an eight inch force main and an adjacent manhole overflow which entered an unnamed tributary to Bonnie Brook. DEQ staff observed the path of sewage across the backyards of three home owners before entering State waters and sewage debris in the area of the manhole immediately upstream of the unnamed tributary to Bonnie Brook.

The Facility is not authorized to discharge to Bonnie Brook.

6. On May 28, 2014, DEQ received from Massanutten a letter explaining the nature of the unauthorized discharge on May 17, 2014.
7. On June 11, 2014, DEQ VRO issued Notice of Violation No. W2014-06-V-0001 to Massanutten for the unpermitted discharges to State waters on May 17, 2014. The NOV also references overflows from in this same section of force main line or pump station/ manhole on June 7, 2013, November 23, 2013, January 8, 2014, February 3, 2014, February 20, 2014, and April 3, 2014.

In addition, there were overflows resulting from breaks in this force main on April 17, 2012 and November 10, 2011, which were not referenced in the NOV.

8. On June 26, 2014, DEQ staff met with representatives of Massanutten to discuss the NOV, the problems that led to the violations cited in the NOV and corrective actions needed to address the problems. During that meeting, Massanutten discussed some of the corrective actions that it had taken to address problems including the replacement of the section of force main where the break occurred.
9. By letter dated July 8, 2014, at DEQ's request, Massanutten submitted Standard Operating Procedures for how staff are to address sewer spills and a copy of its spreadsheet that it uses for tracking sewer line breaks and overflows from the collection system.

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 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.
12. The Permit Part II.F. states that: “Except in compliance with this permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes”.
13. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
14. The Department has issued no permits or certificates to Massanutten other than coverage under VPDES Permit No. VA0024732 and coverage under the General VPDES Permit for Total Nitrogen and total Phosphorus VAN000000 which authorizes discharges of nutrients from the Facility to Quail Run in compliance with conditions of that permit.
15. Bonnie Brook is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
16. Based on Massanutten letters to DEQ, the June 26, 2014, meeting, DEQ’s investigation report, and a file review, the Board concludes that Massanutten has violated Va. Code § 62.1-44.5, 9 VAC 25-31-50 and the Permit, by discharging wastewaters to State waters while concurrently failing to comply with the conditions of the Permit, as described in Section C above.

SECTION D: Agreement and Order

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

Pay a civil charge of **\$5,687.50** 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

Massanutten shall include its Federal Employer Identification Number (FEIN) (54-1127961) 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, Massanutten shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Massanutten for good cause shown by Massanutten, 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, Massanutten admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Massanutten 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. Massanutten 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 Massanutten 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. Massanutten 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 unforeseen occurrence beyond its control and not due to a lack of good faith or diligence on its part. Massanutten shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Massanutten 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 Massanutten intends 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, 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 Massanutten. Nevertheless, Massanutten 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 Massanutten has completed all of the requirements of the Order;
 - b. Massanutten 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 Massanutten.

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

And it is so ORDERED this 18th day of December, 2014.



Amy T. Owens, Regional Director
Department of Environmental Quality

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Massanutten Public Service Corporation voluntarily agrees to the issuance of this Order.

Date: 10/21/14 By: Tony L Sharp Regional Mgr
(Person) (Title)
Massanutten Public Service Corporation

Commonwealth of Virginia

City/County of Rockingham

The foregoing document was signed and acknowledged before me this 21st day of October, 2014, by Tony L. Sharp who is

Regional Manager of Massanutten Public Service Corporation on behalf of Massanutten Public Service Corporation

Pamela L. Shaffer
Notary Public

7060575
Registration No.

My commission expires: 9-30-2018

Notary seal:

