COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
W. HAROLD TALLEY II, LLC
FOR
GRAY'S CREEK MARINA
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 W. Harold Talley II, LLC, regarding Gray's Creek Marina, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

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. "Facility" or "Plant" means the Gray's Creek Marina Wastewater Treatment Plant located at 101 Marina Drive, in Surry County, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of W. Harold Talley II, LLC.

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

9. "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.

10. "Permit" means VPDES Permit No. VA0091308, which was issued under the State Water Control Law and the Regulation to Addison's Incorporated (Addison's) on August 25, 2003 and which expired on August 24, 2008.

11. "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.

12. "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.

13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

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

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

16. "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.

17. "Talley" means W. Harold Talley II, LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Talley is a "person" within the meaning of 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. Talley owns and operates the Plant. Talley became the owner of the Plant on January 9, 2009. The Permit for the Plant expired on August 24, 2008. The Permit allowed the discharge of treated sewage and other municipal wastes from the Plant, to Gray's Creek, in strict compliance with the terms and conditions of the Permit.

2. Gray's Creek is located in the James River Basin. Gray's Creek is listed in DEQ's 305(b)/303(d) report as a Category 2B ("Waters are of concern to the state but no Water Quality Standard exists for a specific pollutant, or the water exceeds a state screening value or toxicity test.") The Creek was fully supporting of the Aquatic Life Use and fully supporting with observed effects of the Fish Consumption Use due to a VDH advisory for kepone. The other designated uses were not assessed. Gray's Creek is considered a Tier 2 water. The Plant was addressed in the Chesapeake Bay Total Maximum Daily Load plan, which was approved by the EPA on December 29, 2010. The Plant was included in

the aggregated wastewater loads for total nitrogen, total phosphorus, and total suspended solids in the James River Oligohaline segment.

3. On May 6, 2010, Department staff conducted a compliance inspection of the Plant. During the inspection it was noted that apartments were occupied at the Marina, that the Plant was operating, that wastewater at the Plant was at the point of discharge and likely to discharge.

4. PRO issued Notice of Violation No. W2011-01-P-0001 on January 6, 2011, because Talley did not apply for a VPDES Discharge Permit and the inspection performed on May 6, 2010 indicated that the Plant was in use and likely to be discharging.

5. On January 25, 2011, Department staff met with representatives of Talley to discuss the NOV. Talley informed the Department that the discharge valve for the Plant was shut off and that the discharge had ceased. Talley could not provide the date that this occurred. During the meeting Talley provided a receipt dated August 20, 2010, from the company that pumped the wastewater from the Plant but did not provide receipts for pumping before or after that date.

6. On January 26, 2011 the Department received a response from Talley which indicated that Talley intended to go through the permitting process to receive a VPDES permit for the operation of the Plant.

7. On March 3, 2011, Department staff performed an inspection of the Plant. During the inspection it was noted that apartments were occupied at the Marina, that the Plant was operating, that wastewater at the Plant was at the point of discharge and likely to discharge. The inspector also noted that there was no apparent device in place to prevent wastewater from discharging into Gray's Creek.

8. On April 26, 2011, W. Harold Talley II, LLC came under new management.

9. On April 28, 2011, Department staff met with representatives of Talley to discuss what corrective actions Talley would take to return the Plant to compliance.

10. Va. Code § 62.1-44.5 states that: "Except 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. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

13. The Department has issued no permits or certificates to Talley.

14. Gray's Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

15. Based on Department records, the Board concludes that Talley has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging from the Plant, in the absence of a permit or certificate issued by the Department, as described in paragraphs C(3) through C(7), above.

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

4. Talley 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. Talley 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 Talley 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. Talley 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 occurrence. Talley shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Talley 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 Talley 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, their 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 Talley. Nevertheless, Talley 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. Talley 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

b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Talley.

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

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, W. Harold Talley, II, LLC, voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 29th day of September, 2011.

Michael P. Murphy, Regional Director
Department of Environmental Quality

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W. Harold Talley, II, LLC voluntarily agrees to the issuance of this Order.

Date: 7-15-2011 By: William D. Talley, Manager
(Person) (Title)
W. Harold Talley, II, LLC

Commonwealth of Virginia
City/County of Henrico

The foregoing document was signed and acknowledged before me this 15th day of July, 2011, by William D. Talley who is Manager of W. Harold Talley, II, LLC, on behalf of the company.

Victoria Daniel
Notary Public

147379
Registration No.

My commission expires: June 30 2015

Notary seal:

VICTORIA DANIEL
NOTARY PUBLIC
MY COMMISSION NUMBER 147379
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **Unpermitted Discharge/Spill**

   a. Talley shall immediately cease the discharge of wastewater from the Plant to Gray's Creek. Talley shall submit documentation to the Department no later than **November 15, 2011**, that confirms that the outlet from the wastewater treatment plant has been sealed.

   b. Talley shall immediately begin collecting and transporting (pump and haul) wastewater from the Plant to a regional wastewater treatment system. Wastewater must be transported by a licensed septage hauler to a Department permitted wastewater treatment facility. Receipts and records of all pump and haul activities must be submitted to the Department until a VPDES permit is issued to Talley for discharges from the Plant, or a Virginia Department of Health (VDH) permit is issued to Talley to allow subsurface wastewater treatment at the Marina, or the Plant ceases operations.

   c. Talley shall pump and haul wastewater from the Plant until a VPDES permit is issued to Talley for discharges from the Plant, or a Virginia Department of Health (VDH) permit is issued to Talley to allow subsurface wastewater treatment at the Marina, or the Plant ceases operations. Talley shall submit a closure plan and schedule to the Department for review and approval, within sixty days of such an occurrence, if a VDH permit is issued or the Plant ceases operations. Talley shall implement the approved plan and schedule and shall in no case complete closure later than 180 days after cessation of Plant operations or issuance of the VDH permit.

2. **DEQ Contact**

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

   Jennifer Hoeffner
   Enforcement Specialist, Sr.
   VA DEQ – Piedmont Regional Office
   4949-A Cox Road
   Glen Allen, Virginia 23060
   804-527-5123
   804-527-5106 (fax)
   jennifer.hoeffner@deq.virginia.gov