



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **SPECIAL ORDER BY CONSENT**

#### **ISSUED TO**

#### **TOWN OF BERRYVILLE – BERRYVILLE STP**

**(VPDES Permit No. VA0020532)**

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and the Town of Berryville, for the purpose of resolving certain violations of environmental laws and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
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.
5. “Order” means this document, also known as a Consent Special Order.
6. “STP” means sewage treatment plant.

7. "Berryville" and "Town" means Town of Berryville, which owns and operates the Town of Berryville STP.
8. "Facility" and "Plant" mean the Berryville STP located in Clarke County, Virginia.
9. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
10. "Permit" means Virginia Pollutant Discharge Elimination System Permit No. VA0020532, which became effective September 30, 2001 and expires September 30, 2006. Permit limits include pH, total suspended solids ["TSS"], carbonaceous biochemical oxygen demand ["CBOD"], ammonia, and chlorine ["TRC"].
11. "NOV" means Notice of Violation.
12. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.
13. "MGD" means million gallons per day
14. "P.E.R." means preliminary engineering report.
15. "I&I" means infiltration and inflow.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Berryville owns and operates a sewage treatment facility serving the Town of Berryville, which has approximately 3,000 residents and is located in Clarke County, Virginia. The Facility is the subject of VPDES Permit VA0020532 which allows the Facility to discharge treated wastewater to the Shenandoah River in the Shenandoah River subbasin and the Potomac River basin.
2. The design capacity of the Facility has been rated and approved as 0.45 MGD. As of May 2003 the effluent flows from the Facility exceeded design capacity for three consecutive months. During 12 months out of a 19 month period (December 2002 through July 2004), the monthly average flows through the STP have exceeded the Facility's design capacity. These exceedances of the design capacity appeared to coincide with periods of wet weather.
3. On August 13, 2002, DEQ issued Warning Letter No. W2002-06-V-1001 to Berryville for apparent violations of TSS effluent limits occurring during the period from January 2002 through May 2002.
4. By letter dated August 27, 2003, the Town submitted to DEQ a plan of action to address the exceedance of the 95% design flow for the Facility. Within the August 27, 2003,

letter, the Town also discussed the possibility of pursuing the re-rating of the Facility for a higher design flow.

5. During the period from December 2002 through April 2004, the Town reported over 9 unpermitted discharges of treated or partially treated sewage at the pump station for the Facility's outfall line. These unpermitted discharges appeared to coincide with periods of wet weather. The frequency, duration and repeated nature of these unpermitted discharges indicate that the Town's collection system has a significant I&I problem.
6. The Town's sewage collection system receives excessive I&I which is causing the Facility's design capacity to be exceeded. In addition, these excessive flows caused problems with the Facility's ability to convey all of the treated effluent to the permitted receiving stream. The Facility's permitted outfall is located at the end of a 3.9 mile long effluent line to the Shenandoah River. The Town found that the effluent line could not handle all of the excessive flows causing the effluent to back up and discharge into Dog Run. Discharges to Dog Run are not authorized under the Permit.
7. On April 14, 2004, DEQ met with Berryville to discuss the ongoing problems with the unpermitted discharges, the design capacity exceedances, and the permitting issues related to the Town's proposals to address those issues. The combination of design capacity exceedances and the potential re-rating of the Facility to a higher design capacity have placed the Facility into the category of a significant discharger to the Chesapeake Bay, which could require the Town to design the Facility to meet nutrient limits in the future. These issues could have a significant impact on the Town's discharge permit and the planning to address the ongoing problems. The April 14, 2004, meeting included discussions of the need for a plan of corrective actions to address the compliance problems.
8. On May 12, 2004, DEQ issued NOV No. W2004-05-V-0001 to Berryville for apparent violations of TSS and CBOD effluent limits occurring during the period from January 2004 through March 2004. The NOV also cited unpermitted discharges in April and February 2004, November through December 2003, September 2003, May 2003, March 2003 and December 2002.
9. On June 8, 2004, DEQ met with Berryville in an informal settlement conference to discuss the NOV and ongoing problems with the unpermitted discharges, design capacity exceedances and permitting issues. The June 8, 2004, meeting included discussions of the corrective actions that the Town had taken to date to address the Facility's problems and the need for a plan and schedule of corrective actions to return the Facility to compliance with effluent limitations.
10. By letters dated June 15, 2004 and July 27, 2004, Berryville submitted to DEQ a written plan and schedule of corrective actions to return the Facility to compliance with the Permit's requirements. Sections of this plan and schedule have been incorporated into Appendix A of this Order.

11. On July 13, 2004, DEQ issued NOV No. W2004-07-V-0007 to Berryville for apparent violations of TSS and CBOD effluent limits occurring during May and April 2004. In addition, the Facility experienced an unpermitted discharge in June 2004, which was not cited in an enforcement document.
12. On August 13, 2004, Berryville completed the cleanout "pigging" of the effluent line to remove internal corrosion and scaling to improve the line's capacity to convey additional effluent to the receiving stream. On August 18, 2004, Berryville completed the installation of aeration equipment for both treatment lagoons to improve the performance of the Facility.

**SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Berryville, and Berryville agrees, to perform the actions described in Appendix A, Appendix B and Appendix C of this Order. In addition, the Board orders Berryville, and Berryville voluntarily agrees, to pay a civil charge of \$4700 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 payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, Berryville shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

**SECTION E: Administrative Provisions**

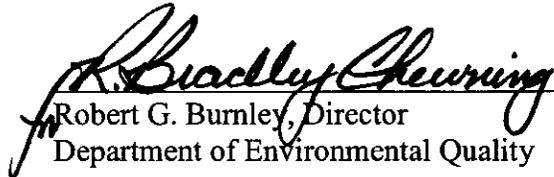
1. The Board may modify, rewrite, or amend the Order with the consent of Berryville, for good cause shown by Berryville, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves those violations identified herein, including those matters addressed in the Notices of Violation issued to Berryville by DEQ on July 13, 2004 and May 12, 2004, and the Warning Letter issued to Berryville on August 13, 2002. 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 as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Berryville admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Berryville 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. Berryville declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 enforce this Order.
6. Failure by Berryville 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. Berryville 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. Berryville shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Berryville shall notify the DEQ Regional Director in writing 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 Director of the Valley Regional Office within 24 hours of learning of any condition above, which Berryville 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 Berryville. Notwithstanding the foregoing, Berryville agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Berryville. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Berryville from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. Nothing herein shall be construed as altering the Permit.
13. By its signature below, the Town of Berryville voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of DEC 6, 2004.

  
Robert G. Burnley, Director  
Department of Environmental Quality

Town of Berryville voluntarily agrees to the issuance of this Order.

By: [Signature]

Title: Mayor

Date: 10/13/04

Commonwealth of Virginia

City/County of CLARKE

The foregoing document was signed and acknowledged before me this

13th day of OCTOBER, 2004, by Richard G. Sporseller,  
(name)

who is Mayor of the Town of Berryville, on behalf of the Town.  
(title)

[Signature]  
Notary Public

My commission expires: 4-30-2008

**APPENDIX A  
SCHEDULE OF COMPLIANCE  
TOWN OF BERRYVILLE STP**

1. **By September 30, 2004**, Berryville shall submit to DEQ for review and approval a VPDES permit application for the revocation and reissuance or modification of the Permit to re-rate the Facility to a 0.7 MGD design capacity. Berryville shall respond to comments regarding the Permit application **within 30 days** of receipt of written comments.
2. **By December 15, 2004**, Berryville shall complete installation of the larger capacity pumps for the effluent line and determine the actual flow that the Town can pump through the cleaned out effluent line.
3. **Within 30 days** of the effective date of the Permit reissuance/modification, Berryville shall submit to DEQ for review and approval the plans and specifications for the re-rated Facility upgrades **necessary** to meet effluent limitations contained in Appendix B of this Order. Berryville shall include with the plans and specifications the design calculations demonstrating that the re-rated Facility can meet SCAT regulation requirements.
4. **Within 45 days** of approval of the plans and specification for the re-rated Facility, Berryville shall begin construction of any upgrades needed to comply with Permit requirements.
5. **Within 180 days** of beginning construction of needed Facility upgrades, Berryville shall complete construction of the Facility upgrades needed to meet Permit requirements.
6. **Within 60 days** of completing construction of needed Facility upgrades, Berryville shall meet all final Permit effluent limitations.

**Infiltration and Inflow Control Program**

7. **By September 30, 2004**, Berryville shall begin the sewer system evaluation study (SSES) work laid out in its letter dated June 7, 2004, and shall include, at minimum, the following:
  - a. A public information program;
  - b. Collection system line integrity testing utilizing TV monitoring and smoke testing;
  - c. Assessment of leakage for all pump stations, manholes and other access points;
  - d. Conducting flow metering during day and night and wet and dry weather conditions;
  - e. Producing a collection system map with pipe sizing, pump stations, manhole locations, and graphic reference points; and
  - f. Analysis and project report.
8. **By June 1, 2005**, Berryville shall complete the SSES work.

9. **By August 15, 2005**, Berryville shall submit to DEQ for review and approval the SSES report describing the work done and its findings. The report shall provide a corrective action plan and schedule of prioritized I&I projects, which will be performed to remove I&I sources identified in the collection system. Berryville shall respond to comments on the SSES **within 30 days** of receiving written comments. Upon approval of the plan and schedule, DEQ may require that it be incorporated by reference and will become enforceable part of this Order.
  
10. Berryville shall submit quarterly progress reports to DEQ, with the first report being due **October 10, 2004**. Subsequent Progress Reports will be due by **January 10, April 10, July 10, and October 10**, along with the Facility's Discharge Monitoring Report until the cancellation of the Order. The quarterly progress reports shall contain:
  - a. a summary of all work completed since the previous progress report in accordance with this Order.
  - b. a projection of the work to be completed during the upcoming quarter in accordance with this Order; and
  - c. a statement regarding any anticipated problems in complying with this Order.
  
11. No later than **14 days** following a date identified in the above schedule of compliance Berryville shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

## APPENDIX B: DESIGN EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>			<u>MONITORING REQUIREMENTS</u>	
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Minimum</u>	<u>Frequency</u>	<u>Sample Type</u>
Flow (MGD) <sup>a</sup>	NL	NA	NA	Continuous	T/I/R
pH (standard units)	NA	NA	6.5	1/Day	Grab
CBOD <sub>5</sub> <sup>b</sup>	25 mg/L	40 mg/L	NA	3/Week	8 HC
Suspended Solids <sup>b</sup>	66 kg/d	110 kg/d	NA	1/Month	8 HC
Ammonia-N (Jun-Dec)	79 kg/d	120 kg/d	NA	1/Month	8 HC
E. coli (Geometric Mean) (N/100 mL)	11 mg/L	15 mg/L	NA	1/Week between 10am and 4pm	Grab
Orthophosphate <sup>d</sup>	126	NA	NA	2/Month	8 HC
Total Phosphorus <sup>d</sup>	NL (mg/L)	NA	NA	2/Month	8 HC
Total Phosphorus (kg/calendar year)	NL (mg/L)	NA	NA	1/Month	Calculated
Total Kjeldahl Nitrogen (as N) <sup>d</sup>	NA	NA	NA	1/Month	Calculated
Nitrate plus Nitrite (as N) <sup>d</sup>	NL (mg/L)	NA	NA	2/Month	8 HC
Total Nitrogen <sup>c</sup>	NL (mg/L)	NA	NA	2/Month	8 HC
Total Nitrogen (kg/month)	NA	NA	NA	1/Month	Calculated
Total Nitrogen (kg/calendar year)	NA	NA	NA	1/Month	Calculated

NL = No Limitation, monitoring required

NA = Not Applicable

T/I/R = Totalizing, Indicating, and Recording

8 HC = 8-hour composite

- a. The design flow of this treatment facility is 0.700 MGD.
- b. At least 85% removal for BOD<sub>5</sub> and TSS must be attained for this discharge.
- c. Total Nitrogen, which is the sum of Total Kjeldahl Nitrogen and Nitrates plus Nitrites, shall be derived from the results of those tests.
- d. Sampled no less than 2 weeks apart.
- e. There shall be no discharge of floating solids or visible foam in other than trace amounts.

**APPENDIX C: INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

During the period beginning with the effective date of this Consent Special Order and lasting until the revocation and reissuance of the Permit and completion of **any needed** Facility upgrade as required in Appendix A, Berryville shall limit and monitor the discharge from outfall 001 in accordance with the Permit except as specified below.

	<u>DISCHARGE LIMITATIONS</u>			<u>MONITORING REQUIREMENTS</u>		
	<u>Monthly Average</u> mg/l	<u>Weekly Average</u> mg/l	<u>Min.</u>	<u>Max.</u>	<u>Frequency</u>	<u>Sample Type</u>
TSS	48	57	NA	NA	3D/W	8HC
CBOD <sub>5</sub>	29	47	NA	NA	3 D/W	8HC

NA = Not Applicable