COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
THE CITY OF EMPORIA
FOR
VPDES PERMIT NO. VA0020346

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 Emporia 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. "The City" means the City of Emporia, a political subdivision of the Commonwealth of Virginia. The City is a "person" within the meaning of Va. Code § 62.1-44.3

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. "DMR" means Discharge Monitoring Report.

9. "Effluent" means wastewater – treated or untreated- that flows out of a treatment plant, sewer, or industrial outfall.

10. "Facility" or "Plant" means the Emporia Waste Water Treatment Plant located at 500 Tall Oaks Drive in Emporia, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the City of Emporia.

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

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. "Permit" means VPDES Permit No. VA0020346 which was issued under the State Water Control Law and Regulation to the City of Emporia on May 14, 2007, due to expire on May 13, 2012. The Permit will be administratively continued until it is reissued, which is anticipated to be no later than June 1, 2012.

14. "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.

15. "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.

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

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

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

19. "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.

20. "Va. Code" means the Code of Virginia (1950), as amended.

21. "VAC" means the Virginia Administrative Code.

22. "VPDES" means the Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. The City owns and operates the Plant. The Permit allows the City to discharge treated sewage and other municipal wastes from the Plant to the Meherrin River, in strict compliance with the terms and conditions of the Permit.

2. The Meherrin River is located in the Chowan and Dismal Swamp River Basin. During the 2010 305(b)/303(d) Integrated Water Quality Assessment, the Meherrin River was impaired of the Aquatic Life Use due to low dissolved oxygen and of the Fish Consumption Use due to mercury and PCB fish consumption advisories. It is therefore considered a Tier 5A water. Fish tissue sampling indicated that arsenic exceeded the DEQ screening value and is considered a non-impairing observed effect. The river was fully supporting of the Recreation and Wildlife Uses. The river has historically been considered a Tier 1 water. It is not addressed in a currently approved TMDL.

3. In submitting its DMRs, as required by the Permit, the City has indicated that it exceeded discharge effluent limitations contained in Part I.A.1 of the Permit for total suspended solids (TSS) and E. Coli for the months of September 2011 and October 2011.

4. DEQ staff performed a site inspection on November 9, 2011 and although the staff observed an influent with a large amount of suspended solids, the Plant effluent was clear.

5. On December 8, 2011, DEQ issued a Notice of Violation (NOV) No. W2011-12-P-0001 to the City for the TSS and E. Coli exceedences of the effluent limitations contained in the Permit.

6. On December 13, 2011 the City and DEQ discussed the violations cited in the NOV. The City stated that the TSS and E. Coli exceedences were due to an unanticipated Plant upset reportedly caused by an unusual discharge to the Plant. The City reported that the influent to the Plant was black in color and very high in solids, which caused the Plant's ultraviolet (UV) disinfection system to be ineffective.

7. On March 22, 2012, DEQ met with the City to discuss the corrective actions taken by the City to address the TSS and E. Coli exceedences. The City reported that it had traced the unusual discharge to an industrial user of the system, and that the industrial user has modified its discharge to the City's wastewater collection system. The City also reported that it had purchased additional polymer and had added it into the Plant to precipitate the solids in order to comply with the TSS effluent limits, and to improve the clarity of the discharge in order for the UV disinfection to operate effectively.

8. 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."

9. 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.

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

11. The Department has issued no other VPDES permits or certificates to the City other than VPDES Permit No. VA0020346.

12. The Meherrin River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

13. Based on the results of the DMRs submitted for the months of September 2011 and October 2011, DEQ's staff inspection on November 9, 2011, phone discussions on December 13, 2011, and the meeting with the City on March 22, 2012, the Board concludes that the City 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, as described in paragraphs C(3) through C(7) above.

14. Corrective actions taken by the City demonstrate that the violations described in paragraphs C(3) through C(7) above, have been addressed, and the City is in compliance with the Permit.

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, and the City agrees to:

1. Pay a civil charge of **$5,208** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payments 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 City shall include its Federal Employer Identification Number (FEIN) 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 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.

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 Richmond 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

   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 City 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 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 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 of Emporia voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2012.

_____
Michael P. Murphy, Regional Director
Department of Environmental Quality

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

Date: 6/8/12 By: _____ (Person) City Manager (Title)

Commonwealth of Virginia
The City/~~County~~ of Emporia

The foregoing document was signed and acknowledged before me this 8 day of June, 2012, by Brian S. Thrower who is City Manager of the City of Emporia.

_____
Notary Public

320183
Registration No.

LORI R. JARRATT
NOTARY PUBLIC
MY COMMISSION NUMBER 320183
COMMONWEALTH OF VIRGINIA

My commission expires: August 31, 2014

Notary seal: