



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

5636 Southern Boulevard
Virginia Beach, VA 23462
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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Francis L. Daniel
Tidewater Regional Director
(757) 518-2000

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

SOUTHAMPTON COUNTY

VPDES Permit No. VA0026417

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Southampton County, for resolving certain violations of environmental law and/or 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 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. "County" means Southampton County.
7. "Regulation" means 9 VAC 25-31-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
8. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

9. "Permit" means VPDES Permit VA0026417, which became effective November 21, 2000 and expires November 21, 2005.

SECTION C: Finding of Facts and Conclusions of Law

1. Southampton County owns and operates the Boykins wastewater treatment plant, located at Deloatche Avenue, in Boykins, Virginia. The County is subject to VPDES Permit VA0026417, which was issued November 21, 2000, and expires November 21, 2005. The Permit authorizes the County to discharge treated wastewater to the Lower Meherrin River, which is a tributary of the Chowan River.
2. The Permit authorizes the County to implement an approved pretreatment program. Pursuant to the approved pretreatment program, the County issued a local permit to Narricot Industries L.P. (Narricot), a textile manufacturing facility, authorizing Narricot to discharge industrial wastewater to the Boykins wastewater treatment plant.
3. Between October 2003 and February 2004 the County exceeded the permitted total suspended solids (TSS) maximum loading limit two times and the TSS average loading limit one time. The County also failed to comply with the permitted TSS maximum concentration limit four times, and the TSS average concentration limit five times.
4. On February 2, 2004 and March 18, 2004, DEQ issued warning letters to the County for apparent violations of TSS effluent limitations.
5. On February 6, 2004 and March 29, 2004, the County responded to the above referenced warning letters indicating that the TSS violations were attributable to a series of violations of the Narricot local permit.
6. On February 18, 2004, DEQ staff conducted a pretreatment program inspection. DEQ staff documented that the County failed to follow its approved pretreatment program. County records indicate that Narricot violated its pretreatment permit in October and November of 2003 due to system failures, which resulted in overflows of solids to the Boykins wastewater treatment plant.
7. The County took formal action addressing Narricot's October and November 2003 pretreatment program violations on February 2, 2004 by issuance of five show cause orders. On March 29, 2004, the County conducted a show cause hearing to review the apparent violations at the Narricot facility.
8. Hearing transcripts provided by the County, indicate that during the County's show cause hearing on March 29, 2004, Narricot testified that a change in the yarn used to manufacture its product caused a change in the TSS levels. Narricot

stated that the reformulation and composition of the dyes contributed to the increased toxicity levels. Narricot also stated that due to the dyes contained in the solids there is a direct correlation between the solids content and the toxicity levels.

9. Part F.1 of the County's Permit includes a Toxics Management Program, which requires the County to perform annual toxicity tests; however, the Permit does not include a toxicity limit. The Toxics Management Program specifies that if the results of the toxicity test demonstrate the presence of actual or potential toxicity, a retest is required. If the retest indicates the presence of actual or potential toxicity, the County is required to conduct quarterly toxicity testing for one year. The results of the County's 2003 annual chronic and acute toxicity tests and toxicity tests conducted in January and February 2004 demonstrated the presence of toxicity in the effluent.
10. On April 7, 2004, DEQ issued Notice of Violation (NOV) No. W2004-04-T-0002 citing the referenced pretreatment violations and permit limit exceedances for TSS.
11. Narricot implemented corrective action measures, which included switching to a more efficient polymer for solids settling. The County added the same polymer to the Boykins wastewater treatment plant to assist with the excess suspended solids and toxicity. The County reported a significant improvement of the coagulation of suspended solids. The results of the County's quarterly acute toxicity tests submitted June 8, 2004 indicated the absence of actual or potential toxicity.
12. On November 11, 2004, Narricot entered into a consent order with the County. The consent order required Narricot to pay a civil charge of \$11,000, upgrade the wastewater pretreatment system, commence weekly toxicity testing, chemical oxygen demand testing and additional total suspended solids testing.
13. Part I.A.1 of the Permit specifies maximum and average loading, and maximum and average concentration limitations for TSS. The County violated the Permit requirements by exceeding its TSS maximum and average loading and concentration limits in October, November and December 2003 and January and February 2004.
14. Part I.E.1.a of the Permit authorizes the County to implement a pretreatment program that complies with the Clean Water Act, State Water Control Law, State Regulations, and the approved pretreatment program. The County violated the Permit requirements by failing to follow the approved Enforcement Response Plan as required by the pretreatment program. The pretreatment program includes the implementation of an Enforcement Response Plan, which requires the County to track all instances of noncompliance and initiate appropriate enforcement action within 30 days of violation detection. Appropriate enforcement actions are based on the type of violation and impact on the treatment plant as outlined in the County's Enforcement Response Chart. The County violated the Permit

requirements by failing to take appropriate enforcement action within 30 days of violation detection pursuant to the approved Enforcement Response Plan as required by the pretreatment program.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d), orders the County, and the County agrees to comply with the Permit requirements and implement the approved pretreatment plan authorized by the Permit. In addition, the Board orders the County, and the County voluntarily agrees to pay a civil charge of \$5,000 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include the County's Federal Identification Number and shall reference that payment is being made as a requirement of 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

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the County, for good cause shown by the County, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice of Violation. 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, the County admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The County 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 County 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 the County 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 County shall be responsible for failure to comply with any of the terms and conditions by this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County 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 Regional Director within 24 hours of learning of any condition above, which the County 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 County. Notwithstanding the foregoing, the County 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 the County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, the County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of March 16, 2005.

Francis L. Daniel
Francis L. Daniel, Tidewater Regional Director
for Robert G. Burnley, Director
Department of Environmental Quality

Southampton County voluntarily agrees to the issuance of this Order.

By: [Signature]
Date: JANUARY 11, 2005

Commonwealth of Virginia
City/County of Southampton

The foregoing document was signed and acknowledged before me this 11th day of JANUARY, 2005, by Michael W. Johnson, who is (name)
County Administrator of Southampton County, on behalf of the County. (title)

[Signature]
Notary Public

My commission expires: November 30, 2006