



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION ENFORCEMENT ORDER - ORDER BY CONSENT

### ISSUED TO

**Chesapeake Airport Authority**

**FOR**

**Chesapeake Regional Airport  
VPDES Permit No. VA0068209**

### 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 Chesapeake Airport Authority 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. "CAA" means the Chesapeake Airport Authority, an authority created pursuant to the Acts of Assembly, Va. Code 1966, c. 133. The Chesapeake Airport Authority 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 “WWTP” means the Wastewater Treatment Plant located at the Chesapeake Regional Airport in Chesapeake, Virginia, which treats and discharges treated domestic waste water with industrial contribution, for the tenants of the Chesapeake Regional Airport and nearby residents.
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. VA0068209, which was issued under the State Water Control Law and the Regulation to the Chesapeake Airport Authority on October 1, 1984, renewed on December 1, 2014 and which expires on November 30, 2019.
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. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. “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.
19. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
20. “Va. Code” means the Code of Virginia (1950), as amended.
21. “VAC” means Virginia Administrative Code.
22. “VPDES” means Virginia Pollutant Discharge Elimination System.

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

1. The CAA owns and operates the Facility located at 2800 Airport Drive in Chesapeake, Virginia.
2. The Permit allows CAA to discharge treated municipal waste water with industrial contribution from the Facility to an unnamed tributary to Twelve Foot Ditch to the Northwest River, in strict compliance with the terms and conditions of the Permit.
3. The Northwest River is located in the Chowan and Dismal Swamp Basin. The Northwest River is listed in DEQ’s 305(b) report as impaired for aquatic life based on low dissolved oxygen concentrations.
4. In submitting its DMRs, as required by the Permit, CAA has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for Total Suspended Solids (“TSS”) and fecal coliform, for the months of July 2014 to

February 2015. DMRs submitted for May 2014 and June 2014 reported a quantification level for Oil & Grease above the quantification level required in Part I.A.1 of the Permit. In addition, the DMR submitted for September 2014 indicated the frequency of sampling as one per month; however, CAA indicated that it had taken two samples.

5. TRO issued Notices of Violation for the exceedances described in paragraph C(5) as follows: Notice of Violation No. W2015-02-T-0002 (dated February 6, 2015) and Notice of Violation W2015-03-T-0001 (dated March 5, 2015).
6. On March 13, 2015, CAA met with DEQ staff to discuss the NOV's and the implementation of corrective actions. Reportedly, the tanks of the Facility had not been cleaned out in some time which appeared to have caused the exceedances described in paragraph C(5) above.
7. CAA indicated that it had cleaned out the surge tank, aeration tank, secondary and contact tanks and re-seeded the Facility with new activated biosolids.
8. CAA's operating logs indicate that it discharged treated wastewater from the Plant Monday through Saturday (excluding Christmas Day and New Year's Day) from May 2014 to February 2015.
9. 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
10. 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.
11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
12. The Department has issued no permits or certificates to CAA other than VPDES Permit No. VA0068209.
13. The unnamed tributary to Twelve Foot Ditch and the Northwest River are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.
14. Based on the results of DMRs and accompanying documentation submitted by CAA to DEQ for the months of July 2014 to February 2015, and CAA's responses to the NOV's, the Board concludes that CAA has violated Part 1.A.1 of the Permit, Va. Code §62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(4) through C(6), above.

15. CAA has submitted documentation that verifies that the violations described in paragraphs C(4) through C(6), have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders CAA, and CAA agrees to pay a civil charge of \$4,900.00 within 30 days of the effective date of this 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 shall be delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

CAA shall include its Federal Employer Identification Number (FEIN) [ 54-1129650 ] 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, CAA shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of CAA, for good cause shown by CAA, 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 the purposes of this Order and subsequent actions with respect to this Order only, CAA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. CAA 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. CAA 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 CAA 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. CAA does not waive any rights or objections it may have in any enforcement actions by federal, other state or local authorities arising out of the same facts or facts similar to those recited in this Order.
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. CAA 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. CAA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CAA 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 CAA 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 CAA. Nevertheless, CAA 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 CAA has completed all of the requirements of the Order;
  - b. CAA 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 CAA.

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

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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Regional Director  
Department of Environmental Quality

The Chesapeake Airport Authority voluntarily agrees to the issuance of this Order.

Date: 7-20-2015 By: C.T. Cowling Jr, CHAIRMAN  
(Person) (Title)  
Chesapeake Airport Authority

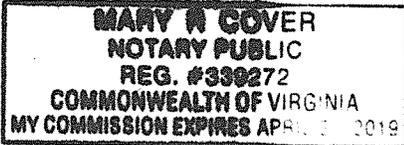
Commonwealth of Virginia  
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 20<sup>th</sup> day of July, 2015, by C. T. Cowling Jr who is Chairman of the Chesapeake Airport Authority on behalf of the authority.

Mary Ann  
Notary Public

339272  
Registration No.

My commission expires: April 30, 2019



Notary seal:

