COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CITY OF WILLIAMSBURG
FOR
WILLIAMSBURG WATER FILTRATION PLANT

Virginia Pollutant Discharge Elimination System Permit No. VA0056537

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 Williamsburg, regarding the Williamsburg Water Filtration Plant, 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. "City" means the City of Williamsburg, 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 the 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. "Facility" means the City ofWilliamsburg Water Filtration Plant located at 618 Waller Mill Road, York County, Virginia, which provides water service to the entire City and parts of York and James City Counties.

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

10. "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.

11. "Permit" means VPDES Permit No. VA0056537 which was issued under the State Water Control Law and Regulations to the City on May 23, 2010, and which expires on May 22, 2015.

12. "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…0 VAC 25-31-10.

13. "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.

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. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

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

19. "VAC" means Virginia Administrative Code.

20. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. The City owns and operates the Facility. The Permit allows the City to discharge industrial wastewater through Outfall 001, to Queen's Creek and the York River within limits as listed in the Permit.

2. Queen's Creek is a tributary of the York River, a tributary to the Chesapeake Bay. This segment of Queen's Creek is listed in DEQ's 305(b) report as impaired for dissolved oxygen and fecal coliform from unknown sources. The York River below Queen's Creek is listed as impaired in DEQ's 305(b) report as impaired for estuarine bioassessments and nutrient Eutrophication (increase in organic matter) Biological Indicators from unknown sources.

3. On March 20, 2014, DEQ staff conducted a compliance inspection of the Facility. During the inspection, DEQ staff observed the discharge from Outfall 001. Grey solids were observed in the vicinity of Outfall 001 that apparently originated from the Facility sedimentation lagoons. Normally these solids would be periodically removed from the lagoons and disposed of at a landfill. Facility personnel stated at the time that they were not aware of the grey solids in the discharge from Outfall 001 and did not know when the loss of solids from the Facility had occurred. Routine inspections of Outfall 001 during discharge were not being conducted, according to Facility personnel. The Facility Operations and Maintenance Manual did not include procedures for management of wastewater solids that might be in the discharge from Outfall 001.

4. On April 24, 2014, DEQ issued Notice of Violation No. W2014-04-T-00021 to the City for the unauthorized discharge to State waters.

5. By letter dated April 25, 2014, the City provided notification of the unauthorized discharge from the Facility, 36 days after discovery. Nevertheless, the City maintains notification was provided at time of discovery by DEQ staff.

6. On May 1, 2014, DEQ staff met with City personnel to discuss the unauthorized discharge and the NOV. The City personnel described the actions that led to the unauthorized discharge, and plans to prevent re-occurrence.

7. Va. Code § 62.1-44.5(A) 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."

8. The Permit at Part I.B.6. requires wastes to be handled, disposed of and/or stored in such as a manner not to permit a discharge of such wastes to State waters except where authorized.

9. The Permit at Part II.F. prohibits unpermitted discharges of pollutants into state waters.

10. The Permit at Part II. G. requires the City to report any unauthorized discharges to DEQ immediately upon discovery of the discharge, but in no case later than 24 hours of said discovery. The Permit also requires the City to provide a written report to DEQ within five days of discovery of the discharge.

11. The VPDES Regulation, at 9 VAC 25-31-50, and the Permit Part II.F. 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 the City other than VPDES Permit No. VA0056537.

14. Based on the Facility inspection on March 20, 2014 and report from the City on April 25, 2014, the Board concludes that unauthorized discharges from the Facility reached State Waters, and that the City has violated the Va. Code, the VPDES Regulation and the Permit by discharging solids from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C3 and C5, above.

15. The City reported to DEQ staff on May 1, 2014 corrective actions to correct the violations described in paragraphs C3 through C4, above.

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. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $10,625.00 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

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). If the Department has to refer collection of moneys due under this Order to the Department of Law, the City shall be liable for attorney's 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 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 the purposes of this Order and subsequent actions with respect to this Order only, the City admits the jurisdictional allegations and agrees not to contest, but does not admit, the 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 show 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 voluntarily agrees to the issuance of this Order.

And it is so ORDERED this_____ day of _____, 2014.

_____
Regional Director
Department of Environmental Quality

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

Date: 8·4·14 By: _____, City Manager
(Person) (Title)
City of Williamsburg

Commonwealth of Virginia
City/~~County~~ of Williamsburg

The foregoing document was signed and acknowledged before me this 4th day of August, 2014, by JACKSON C. TUTHLE who is City Manager of the City of Williamsburg, on behalf of the City of Williamsburg.

_____
Notary Public
7015656
Registration No.

My commission expires: 2/28/2018

Notary seal:

GERRY S. WALTON
COMMONWEALTH OF VIRGINIA
REGISTRATION NO. 7015656
MY COMM. EXPIRES 02/28/2018
NOTARY PUBLIC

APPENDIX A
SCHEDULE OF COMPLIANCE

The City shall:

1. By October 1, 2014, submit to DEQ for review and approval an approvable Corrective Action Plan and Schedule ("CAP") to incorporate the corrective actions to prevent unauthorized discharges from the Facility and Outfall 001 that were reported in the City's correspondence of April 25, 2014.

2. Implement the CAP within 30 days of approval by DEQ.

3. By October 1, 2014, submit to DEQ for review an updated Operations and Maintenance Manual to incorporate management of discharges from Outfall 001 to prevent unauthorized discharges from the Facility and Outfall 001.

4. Mail all submittals and reports required by this Appendix A to:

   Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Blvd.
   Virginia Beach, VA 23462