



DEQ-VALLEY

SEP 21 2012

TO: _____

FILE: _____

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE

Douglas W. Domenech
Secretary of Natural Resources

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
(540) 574-7800 Fax (540) 574-7878
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David K. Paylor
Director

Amy Thatcher Owens
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FORK UNION SANITARY DISTRICT
FOR
OMOHUNDRA WELL WTP
VPDES Permit No. VA0057606
and
MORRIS WELLWTP
VPDES PERMIT No. VA0089559**

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 Fork Union Sanitary District, regarding the Facilities for the purpose of resolving certain violations of the State Water Control Law and the Permit and the 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. "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, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "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.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facilities" or "Plants" means the Morris Well and Omohundro Well water treatment plants owned and operated by FUSD which are located in the vicinity of the Town of Fork Union, in Fluvanna County, Virginia, which discharge treated backwash wastewater.
10. "FUSD" means the Fork Union Sanitary District, a district created pursuant to "The Sanitary Districts Law of 1946 – Nontidal Waters § 21-112.22. FUSD is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "O&M" means operations and maintenance.
13. "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.
14. "Permits" means VPDES Permit No. VA0054606 and VA0089559, which were issued under the State Water Control Law and the Regulation to FUSD on April 20, 2007 and which expired on March 31, 2012. (The Permits were reissued on May 11, 2012).

15. "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.
16. "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.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "SCAT" means Sewage Collection and Treatment Regulations.
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "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.
21. "WTP" means water treatment plant.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means the Virginia Pollutant Discharge Elimination System.
25. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: The Board's Findings of Facts and Conclusions of Law

1. FUSD owns and operates the Facilities, which generate potable drinking water for the Fork Union Sanitary District in Fluvanna County, Virginia. The Permits authorize FUSD to discharge treated backwash wastewater from the Facilities to two different unnamed tributaries to Martins Creek, in strict compliance with the terms and conditions of the Permits.
2. The unnamed tributaries to Martins Creek are located in the James (Middle) River Basin. The unnamed tributaries to Martins Creek and Martins Creek are not assessed in DEQ's 305(b) report. Both of the unnamed tributaries to Martins Creek are considered Tier I waters.
3. The design flows of the Morris Facility and the Omohundro Facility have been rated and approved as 0.035 MGD and 0.005 MGD respectively, measured as a monthly average flow.
4. On June 9, 2011, DEQ provided FUSD with the routine Technical and Laboratory Inspection reports for the May 24, 2011, inspection conducted at the Omohundro Well WTP. These reports documented the presence of sludge through a reach (approximately 70 yards) of the discharge channel during the May 24, 2011 inspection. The inspection report operational problems and contained recommended corrective actions including:
 - a. Eliminate the unauthorized discharge of solids to the environment;
 - b. Describe how current operations allow solids to be discharged from Outfall 001;
 - c. Remove the discharged solids from the drainage conveyance after contacting the Army Corps of Engineers and DEQ-VRO for approval of a permit;
 - d. Update the O&M Manual for current permit requirements and provide details on lagoon operation procedures;
 - e. Perform the lagoon integrity study using the water balance procedures approved on April 8, 2008 (due 60 days after procedure approval and then monthly for 12 consecutive months).

(Note: A response to the inspection deficiencies was due by June 24, 2011). DEQ did not receive a response to the inspection report nor a plan of corrective actions to completely address these Facility operational problems until June 4, 2012.

5. In submitting reports and DMRs, as required by the Permits, FUSD has reported that it had effluent discharges from both Facilities during the months of April and May 2012.
6. The VPDES Permit Regulation and Part II.M. of the Permits require FUSD to submit to DEQ VPDES permit reissuance applications at least 180 days before the expiration of the Omohundro Well WTP and Morris Well WTP Permits. The applications were due October 3, 2011.

7. By letters dated April 4, 2011 and a telephone call on September 9, 2011, DEQ provided FUSD with reminders of the due dates for permit reissuance applications for its Facilities.
8. VRO issued Warning Letters dated October 14, 2011, December 6, 2011 and January 5, 2012 to FUSD for failure to submit complete and timely permit reissuance applications by October 3, 2011 in violation of the Permit Part II.M., VA Code § 62.1-44.5, 9 VAC 25-31-100, and 9 VAC 25-31-50 of the Regulation.
9. On February 14, 2012, VRO issued NOV No. W2012-02-V-0002 to FUSD for failure to submit timely and complete VPDES permit reissuance applications in violation of Permit Part II.M., VA Code § 62.1-44.5, 9 VAC 25-31-100, and 9 VAC 25-31-50 of the Regulation.
10. On February 29, 2012, DEQ received the Permit reissuance applications for the FUSD Facilities. The applications were deemed complete on March 1, 2012.
11. On March 31, 2012, FUSD's Permits expired because FUSD had not provided timely and complete permit reissuance applications due by October 3, 2011.
12. On May 11, 2012, the Permits for the Omohundro Well WTP and Morris Well WTP were reissued to FUSD.
13. FUSD's DMRs indicate that it discharged treated wastewater from the Facilities during the months of April and May 2012 during the period after the expiration and before the reissuance of the Permits.
14. On May 21, 2012, VRO issued NOVs No. W2012-05-V-0004 to FUSD (Omohundro Well WTP) and NOV No. W2012-05-V-0003 to FUSD (Morris Well WTP) for discharging treated wastewater without authorization of a VPDES permit during April and May 2012 in violation of VA Code § 62.1-44.5 and 9 VAC 25-31-50 of the Regulation.
15. There are certain violations regarding the improper operations deficiencies noted in the June 9, 2011 inspection reports for the Omohundro Well (VA0057606) that have not been cited in any enforcement documents and certain items such as the installation of lagoon liners that continue to be outstanding.
16. 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."
17. 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.

18. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
19. The Department has issued no permits or certificates to FUSD authorizing the discharge of wastewater from the Facilities other than VPDES Permit numbers VA0057606 and VA0089559.
20. The unnamed tributaries to Martins Creek and Martins Creek are surface waters located wholly within the Commonwealth and are “state waters” under State Water Control Law.
21. Based on FUSD’s DMRs, FUSD’s letters to DEQ, the NOVs, and file reviews, the Board concludes that FUSD has violated the Permit, Va. Code § 62.1-44.5, 9 VAC 25-31-50, and 9 VAC 25-31-100 of the Regulation, as described in section C.
22. In order for FUSD to return to compliance, DEQ staff and representatives of FUSD have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders FUSD, and FUSD agrees to:

1. Perform the actions described in **Appendix A** of this Order; and
2. Pay a civil charge of **\$10,210** 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, 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

FUSD shall include its Federal Employer Identification Number (FEIN) (**54-6001282**) 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, FUSD shall be liable for attorneys’ fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of FUSD for good cause shown by FUSD, 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 Facilities; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, FUSD admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. FUSD 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. FUSD 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 FUSD 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. FUSD 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. FUSD shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FUSD 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 FUSD 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 FUSD. Nevertheless, FUSD 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. FUSD petition 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
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to FUSD.

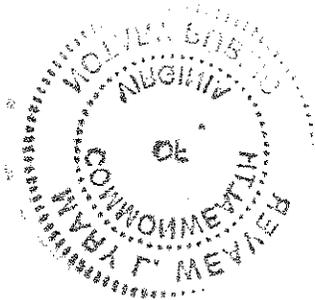
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve FUSD from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by FUSD 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 FUSD 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 FUSD to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of FUSD.
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, Fork Union Sanitary District voluntarily agrees to the issuance of this Order.

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

Amy T. Owens, Regional Director
Department of Environmental Quality



Fork Union Sanitary District voluntarily agrees to the issuance of this Order.

Date: 19 Sep 2012 By: [Signature] BOS Chairman
(Person) (Title)
Fork Union Sanitary District

Commonwealth of Virginia
City/County of Flovanna

The foregoing document was signed and acknowledged before me this 19 day of
September, 2012, by Shawn V. Kenes who is

Chairman of BOS of Fork Union Sanitary District on behalf of Fork Union
Sanitary District.

[Signature]
Notary Public
347136
Registration No.

My commission expires: 31 January 2016

Notary seal:



APPENDIX A
SCHEDULE OF COMPLIANCE
FORK UNION SANITATION DISTRICT-OMOHUNDRO WELL WTP

1. FUSD submitted to DEQ for review and approval both a sludge disposal plan and information showing that the proposed lagoon liner material meets SCAT and DEQ regulatory requirements. FUSD shall respond to comments regarding the sludge disposal plan and/or the liner material **within 30 days** of receipt of written comments.
2. FUSD shall continue TSS monitoring of the Facility's discharge at a frequency of 1/week via 2 hour composite samples. Its first monthly report is due **by September 15, 2012**. If a report shows consistent compliance with the Permit limitations, FUSD may request DEQ's approval to return to the Permit's required frequency of analysis.
3. FUSD has submitted to DEQ for review and comment an updated O&M Manual for current permit requirements and details on lagoon operation procedures as discussed in the May 2011 inspection reports. FUSD shall respond to comments on the O&M Manual **within 30 days** of receipt of written comments.
4. **By October 1, 2012**, FUSD shall complete sludge removal from Lagoon #2 and properly dispose of that sludge in accordance with the approved sludge disposal plan.
5. **By October 8, 2012**, FUSD shall order the new liner for the Facility's lagoon #2 that meets SCAT and DEQ regulatory requirements.
6. **By December 15, 2012**, FUSD shall complete the proper lining of Lagoon #2 and begin pumping down Lagoon #1 and drying sludge.
7. **By February 15, 2013**, FUSD shall complete the sludge removal from Lagoon #1 and properly dispose of that sludge in accordance with an approved sludge disposal plan.
8. **By February 22, 2012**, FUSD shall order the liner for Lagoon #1 that meets SCAT and DEQ regulatory requirements.
9. **By April 15, 2013**, FUSD shall complete the proper lining of Lagoon #1.
10. **By April 15, 2013**, FUSD submit to DEQ for review and approval an updated O&M Manual, incorporating any operational changes resulting from the installation of the lagoon liners. FUSD shall respond to comments on the O&M Manual within 30 days of receipt of written comments.
11. FUSD shall monitor the discharge for compliance with Permit requirements for a period of six months following the completion of the installation of the liners. If FUSD experiences effluent violations and/or the loss of solids, upon written request by DEQ, FUSD shall

submit to DEQ for review and comment a plan and schedule of additional improvements to ensure compliance with the Permit requirements. FUSD shall respond to any comments on the plan and schedule **within 30 days** of receipt of written comments. Upon approval, the plan and schedule shall be incorporated by reference into this Order and becomes enforceable under the Order.

12. No later than **14 days** following a completion date identified in the above schedule of compliance FUSD 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.

DEQ Contact

Unless otherwise specified in this Order, FUSD shall submit all requirements of Appendix A of this Order to:

Steve Hetrick
Enforcement Specialist Sr.
VA DEQ –Valley Regional Office
P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7833 Phone
(540) 574-7878 Fax
Steven.hetrick@deq.virginia.gov