COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Michael P. Murphy
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CITY OF HOPEWELL
FOR
HOPEWELL WASTE WATER TREATMENT PLANT
VPDES Permit No. VA0066630

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 Hopewell, regarding the Hopewell Waste Water Treatment Plant, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

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. "EPA" means Environmental Protection Agency.

10. "Facility" or "Plant" means the Hopewell Waste Water Treatment Plant located at 231 Hummel Ross Rd, Hopewell, Virginia, which treats and discharges treated sewage and other municipal and industrial wastes for the residents and businesses of the City of Hopewell.

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

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

13. "O&M" means operations and maintenance.

14. "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.

15. "Permit" means VPDES Permit No. VA0066630 which was issued under the State Water Control Law and the Regulation to the City of Hopewell on September 30, 2008, modified on April 16, 2012, and which expires on September 29, 2013.

16. "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.

17. "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.

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

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

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

21. "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.

22. "TMDL" means total maximum daily load.

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

24. "VAC" means the Virginia Administrative Code.

25. "VDH" means Virginia Department of Health.

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

27. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Hopewell owns and operates the Facility. The Permit allows Hopewell to discharge treated sewage and other municipal and industrial wastes from the Facility to Gravelly Run, in strict compliance with the terms and conditions of the Permit.

2. Gravelly Run is the receiving body and located in the lower James River Basin. During the 2010 305(b)/303(d) Integrated Water Quality Assessment, Gravelly Run was considered a Category 5A water. The Aquatic Life Use was impaired due to inadequate submerged aquatic vegetation ("SAV") and low dissolved oxygen in the lower tidal freshwater James River estuary ("JMSTF1"). Exceedance of a sediment screening value for mercury was considered an observed effect for the Aquatic Life Use. The Fish Consumption Use was fully supporting with observed effects due to a VDH advisory for kepone. The Recreation and Wildlife Uses were not assessed. The Facility was included in the Chesapeake Bay TMDL, which was approved by the EPA on 12/29/2010. The TMDL addresses dissolved oxygen and SAV impairments in the Chesapeake Bay and its tidal tributaries by allocating total nitrogen, total phosphorus, and total suspended solids to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. The discharge was included in the aggregated wasteload allocations for significant dischargers in JMSTF1. It was also addressed in the James River and Tributaries – Hopewell to Westover Bacterial TMDL, which was approved by the EPA on 7/10/2008 and by the State Water Control Board on 4/28/2009. The Facility received an annual wasteload allocation of 8.71E+13 cfu/year based on an E. coli limit of 126 N/100mL. Gravelly Run is considered a Tier 1 water.

3. In submitting its DMRs, as required by the Permit, Hopewell indicated that it exceeded discharge limitations contained in Part I.A of the Permit, for E.coli, during the months of July, August, November and December, 2011. Hopewell indicated that it believed the exceedances were from chemical or industrial interference in the sample test method.

4. In a letter dated September 14, 2011, Hopewell again indicated the cause of the violations may have been due to analytical issues.

5. On February 16, 2012, DEQ issued NOV No. W2012-02-P0004 for the violations described above in C(3).

6. In letters dated February 2, 2012, and February 21, 2012, Hopewell indicated it had worked with its contract laboratory to determine the correct method and dilution to analyze the samples.

7. Although not cited in an NOV, Hopewell failed to meet minimum dissolved oxygen limits in May 2012.

8. In submitting its DMRs, as required by the Permit, Hopewell indicated that it exceeded discharge limitations contained in Part I.A of the Permit, for E.coli, during the month of July 2012.

9. In submitting its DMRs, as required by the Permit, Hopewell indicated that it exceeded discharge limitations contained in Part I.B for minimum chlorine, during the months of July, August, September, November and December 2012. Hopewell indicated the cause was unknown, and that a sampling study was underway to determine the cause.

10. On September 18-21, 2012, Hopewell conducted testing on side stream chlorine demand, which indicated there was no issue with chlorine demand from the domestic wastewater, that would cause the violations listed above.

11. On December 6, 2012, Hopewell notified DEQ staff of the corrective actions it was taking to prevent further chlorine violations, which were a result of an engineering oversight in the original design of the chlorine contact tank.

12. On January 10, 2013, DEQ issued NOV No. W2013-01-P-0002 for the violations described above in C(8) through C(10).

13. On January 23, 2013, Hopewell submitted a letter, further verifying the engineering design oversight with the chlorine contact tank, the timeline for completion of the corrective action to rectify the oversight, and that these corrections would resolve the minimum chlorine and E.coli violations found in the January 10, 2013 NOV.

14. By February 1, 2013, Hopewell had installed new mixers in the Domestic Primary Clarifier 1, Domestic Primary Clarifier 2, and Domestic Primary Clarifier 3, to direct the chlorine feed directly into the wastewater flow as it entered the contact tank. This installation corrected the chlorine and wastewater mixing issue that led to the violations listed above.

15. On March 29, 2013, Hopewell conducted a slug load dye study to further troubleshoot the system and found that there was no industrial backflow that would cause the violations listed above.

16. In April of 2013, Hopewell installed a chlorine feed control system which guarantees bacterial kill. Now that this system is installed Hopewell is working to install a system to remotely and continuously monitor the chlorine feed system. This monitoring system is to be completely installed by mid-August, 2013.

17. During the last week of June 2013, Hopewell implemented a new protocol by offloading the leachate Hopewell receives into an on-site storage tank from which the leachate is pumped into the domestic disinfection system at a constant rate to prevent slug loadings and high variability in chlorine demand. This protocol has resulted in more consistent chlorine usage.

18. Hopewell's operating logs indicate that it discharged treated wastewater from the Facility every day from July 1, 2011 to December 31, 2012.

19. 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: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances . . .."

20. 9 VAC 25-31-50 (A) provides that "[e]xcept in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances . . .."

21. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

22. DEQ has issued no other VPDES individual permits or certificates to Hopewell for discharges other than VPDES Permit No. VA0066630.

23. Gravelly Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

24. Based on the documentation submitted by Hopewell the Board concludes that Hopewell has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50 by discharging treated effluent from the Facility while concurrently failing to comply with the conditions of the Permit, as described in the paragraphs above.

25. In order for Hopewell to return to compliance, DEQ staff and representatives of Hopewell 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 Hopewell and Hopewell agrees to:

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

2. Pay a civil charge of $3,465.00 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

Hopewell 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, Hopewell 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 Hopewell for good cause shown by Hopewell, 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, Hopewell admits to the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Hopewell 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. Hopewell 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 Hopewell 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. Hopewell 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. Hopewell shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hopewell 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 parties intend 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 and any 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 Hopewell. Nevertheless, Hopewell 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 Hopewell has completed all of the requirements of the Order;

    b. Hopewell 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 Hopewell.

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

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, Hopewell voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2013.

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

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

Date: 8/6/2013 By: _____, Director HRWTF
(Person) (Title)
City of Hopewell

Commonwealth of Virginia

City/County of Hopewell

The foregoing document was signed and acknowledged before me this 6th day of August, 2013, by Mark A. Haley who is HRWTF Director of the City of Hopewell on behalf of the City of Hopewell.

Julie B. Sharp
Notary Public

260609
Registration No.

My commission expires: July 31, 2014

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **O & M Manual**

   Within 90 days of the effective date of this Order, Hopewell shall submit to DEQ for review and approval an updated O&M manual that includes the new equipment, systems and processes added subsequent to the NOVs cited in the Order to address the violations.

2. **DEQ Contact**

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

   Gina Pisoni
   Enforcement Specialist
   VA DEQ – Piedmont Regional Office
   4949-A Cox Road
   Glen Allen, Virginia 23060
   804-527-5156
   804-527-5106 (fax)
   Gina.Pisoni@deq.virginia.gov