COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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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
NORTHUMBERLAND COUNTY
FOR
REEDVILLE SANITARY DISTRICT
WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0060712 and
General VPDES Permit No. VAN00
Registration Number VAN020101

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 Northumberland County, regarding the Reedville Sanitary District Wastewater Treatment Plant, for the purpose of resolving certain violations of the 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. "County" means the County of Northumberland, a political subdivision of the Commonwealth of Virginia. The County 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 "Plant" means the Reedville Sanitary Wastewater Treatment Plant, located at 152 Menhaden Road in Reedville, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Reedville Sanitary District.

11. "GNP" means the General Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia. The County registered for coverage under the GNP, as evidenced by VPDES Permit Registration Number VAN020101, which was issued under the State Water Control Law and Regulation to Northumberland County on January 1, 2007, expired on December 31, 2011, reissued on January 1, 2012, amended on November 21, 2012 and will expire on December 31, 2016.

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. VA0060712, which was issued under the State Water Control Law and the Regulation to Northumberland County on March 5, 2009, amended on August 16, 2011 and will expire on August 15, 2016;.

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

23. "VAC" means the Virginia Administrative Code.

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

SECTION C: Findings of Fact and Conclusions of Law

1. The County owns and operates the Plant in Reedville, Virginia. The Permit and the GNP allow the County to discharge treated sewage and other municipal wastes from the Plant, to Cockrell Creek, in strict compliance with their terms and conditions.

2. Cockrell Creek is located in the Chesapeake Bay, Atlantic, Small Coastal Basin. During the 2010 305(b)/303(d) Integrated Water Quality Assessment, Cockrell Creek was impaired of the Aquatic Life Use due to inadequate submerged aquatic vegetation (SAV) in the Chesapeake Bay mesohaline estuary (CB5MH) and the Fish Consumption Use was impaired due to a VDH advisory for PCBs in striped bass in the Chesapeake Bay and its tidal tributaries. In addition, the segment was considered to have "observed effects"due to some alteration of the benthic community and PAHs in sediment. The Recreation and Wildlife Uses were fully supporting. The discharge 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, total suspended solids loads to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. The discharge from the Reedville WWTP is considered a significant discharge in the CB5MH segment and received individual wasteload allocations for TN,TP, and TSS. Reedville was also addressed in the Cockrell Creek Bacterial TMDL, which was approved by the EPA on 12/8/2008 and by the SWCB on 4/28/2009. The discharge is located within a VDH shellfish harvesting prohibited zone and the facility was not assigned a wasteload allocation for bacteria. Cockrell Creek is considered a Tier 1 water and antidegradation has not been applied.

3. In submitting its DMRs, as required by the Permits, the County has indicated that it exceeded discharge limitations contained in Part I.A.1 of the VPDES Permit No. VA0060712, for Total Phosphorus (TP) for the months of October 2008 through March 2009; and failed to submit the Letters of Explanation for the TP exceedances from October 2008 through March 2009. The County also indicated that it failed to submit DMRs for the GNP No. VAN020101 as required by Part I.E.4, from January 2008 through July 2008; failed to submit an updated Compliance Plan by February 1, 2009, as required by Part I.D; and failed to submit an annual report by February 1, 2009, as required by Part I.F.

4. PRO issued Notice of Violation (NOV) No. W2009-05-P-0003 on May 28, 2009, to the County for the TP exceedances and failure to submit the Letters of Explanation for the TP exceedances as required by VPDES Permit No. VA0060712; and for failure to submit DMRs, an updated Compliance Plan, and an annual report as required by the GNP No. VAN 020101 as described above.

5. In submitting its DMRs, as required by the Permits, the County has indicated that it exceeded discharge limitations contained in Part I.A.1 of the VPDES Permit No. VA0060712 for TP for the months of April 2009 through June 2009, and for failure to submit the Letters of Explanation for the TP exceedances from April 2009 through June

2009. The County also indicated that it failed to submit properly completed DMRs as required by Item 1 of the General Instructions for completing a DMR, for the months of April 2009 through June 2009 for VPDES Permit No. VA0060712, and for the month of April 2009 for GNP No. VAN 020101.

6. PRO issued NOV No. W2009-08-P-0001 on August 10, 2009, to the County for TP exceedances and failure to submit the Letters of Explanation for the TP exceedances as required by VPDES Permit No. VA0060712; and for failure to submit properly completed DMRs as described above.

7. In submitting its DMRs, the County has indicated that it exceeded discharge limitations for TP for the months of July 2009 through September 2009, for Ammonia as Nitrogen for the month of July 2009, and Enterococci for the month of September 2009, as contained in Part I.A.1 of the VPDES Permit No. VA0060712. The County also indicated that it failed to submit an updated Compliance Plan by February 1, 2009, as required by Part I.D of the GNP No. VAN020101; and failed to submit an annual report by February 1, 2009, as required in Part I.F of the GNP N. VAN020101.

8. PRO issued NOV No. W2009-11-P-0002 on November 13, 2009, to the County for TP, Ammonia as Nitrogen, and Enterococci exceedances as required by VPDES Permit No. VA0060712; and for failure to submit the Compliance Plan and annual report as required by GNP No. VAN020101, as described above.

9. In submitting its DMRs, the County has indicated that it exceeded discharge limitations for TP for the months of October 2009, November 2009, April 2010 through December 2010, and for February, June, July and September 2011; for Ammonia as Nitrogen in October and November 2009, June 2010 through October 2010, February 2011, May through July 2011, and for September and October 2011; and for Enterococci for the months of October 2009 and February 2010. The County also indicated that it failed to submit a Letter of Explanation for the Ammonia as Nitrogen exceedance for the month of October 2011; failed to update or confirm that the current O&M Manual is accurate and complete due by November 14, 2011; and failed to submit the Industrial Users discharging to the WWTP due by February 12, 2012.

10. PRO issued the following NOVs for the above described violations: NOV No. W2010-05-P-0002 on May 14, 2010; NOV No. W2010-09-P-0004 on October 8, 2010; NOV No. W2011-07-P-0001 on July 28, 2011; NOV No. W2011-11-P-0002 on November 3, 2011; and NOV No. W2012-03-P-0004 on March 8, 2012. After the March 2012 NOV was issued, the County indicated in submitting its DMRs, that it exceeded discharge limitations for Ammonia as Nitrogen and failed to submit Letters of Explanation for the exceedances for the months of September 2012 and February 2013.

11. The County responded to the Notices of Violation by meeting with PRO, submitting the missing and corrected DMRs, submitting the Letters of Explanation, increased the addition of chlorine to the discharge to address the enterococci exceedances, submitting the updated Compliance Plan, submitting the annual reports, hiring a consultant to design

a plant upgrade, submitting a Preliminary Engineering Report (PER) to bring the WWTP into compliance with the Permit, verifying that the O & M Manual is current and accurate, providing the current Industrial Users information, working with DEQ to come into compliance with the nutrient requirements contained in the GNP by purchasing nutrient exchange credits, by working on operational processes to improve compliance with the discharge effluent limitations, working to establish new customer rates to escrow money to provide funding for required upgrades, seeking to acquire grant and/or loan monies to fund the required upgrade to the WWTP, and by continuing to communicate with PRO.

12. The planned upgrade will address the discharge limitation exceedances of TP and Ammonia as Nitrogen.

13. Va. Code § 62.1-44.5 states that: "Except 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."

14. 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.

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

16. The Department has issued no permits, certificates or permit coverage to the County other than VPDES Permit No. VA0060712 and coverage under the GNP as evidenced by registration number VAN020101.

17. Cockrell Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

18. Based on the results of the DMRs submitted for the months of October 2008 through October 2013, the meetings, the reports and information submitted to DEQ, the Board concludes that the County has violated the Permit, the GNP and Va. Code §62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs **C(3)** through **C(11)**, above.

19. In order for the County to return to compliance, DEQ staff and representatives of the County have agreed to the Actions of Compliance, which is incorporated in 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 the County, and the County agrees to:

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

2. Pay a civil charge of **$3,675** in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
December 10, 2013	$ 920 or balance
March 10, 2014	$ 920 or balance
June 10, 2014	$ 920 or balance
September 10, 2014	$ 915 or balance

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late, the Department shall have the right to demand in writing full payment of the entire remaining balance under this order by Northumberland County, and the entire remaining balance of the civil charge shall be immediately due and owing. Northumberland County shall pay the entire remaining balance within 15 days of receipt of the demand letter from the Department. Any acceptance by the Department of a late payment or of a payment of less than the entire remaining balance shall not serve as a waiver of the Department's right to accelerate payment of the balance under this Order.

4. 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

5. The County 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the County for good cause shown by the County, 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, the County admits the jurisdictional allegations, findings of fact, 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 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 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 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 County shall demonstrate 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 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 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. Nevertheless, 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:

    a. The Director or his designee terminates the Order after the County has completed all of the requirements of the Order;

    b. the County 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 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. Any plans, reports, schedules or specifications attached hereto or submitted by the County 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 County 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 County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the County.

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 County 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 County of Northumberland voluntarily agrees to the issuance of this Order.

Date: 8/12/2013 By: _____, County Administrator
(Person) (Title)

Commonwealth of Virginia
City/County of Northumberland

The foregoing document was signed and acknowledged before me this 12 day of

August, 2013, by Kenneth D. Eades who is

County Administrator of the County of Northumberland, on behalf of the County.

Mary Dodson
Notary Public

151482
Registration No.

My commission expires: 7-31-2017

Notary seal:

Mary S. Dodson
Commonwealth
Reg. No. 151482
of Virginia
NOTARY PUBLIC

APPENDIX A
SCHEDULE OF COMPLIANCE

The County of Northumberland shall:

1. **By no later than August 10, 2013**, the County shall increase sewer rates to $37 per month.

2. **By no later than December 1, 2013**, start construction of the WWTP to bring the Reedville WWTP into compliance with the effluent limits in the Permit.

3. **By no later than June 1, 2015**, complete construction of the WWTP.

4. Unless otherwise specified in this Order, The County of Northumberland shall submit all requirements of Appendix A of this Order to:

Cynthia Akers
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949-A Cox Road
Glen Allen, VA 23060
Phone: (804) 527-5079
Fax: (804) 527-5106
e.cynthia.akers@deq.virginia.gov