COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
THE TOWN OF MIDDLEBURG
FOR THE TOWN OF MIDDLEBURG WASTEWATER TREATMENT PLANT and COLLECTION SYSTEM
VPDES PERMIT NO. VA0024775

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 Town of Middleburg, regarding the Town of Middleburg Wastewater Treatment Plant and the associated collection system, 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. "$CBOD_5$" means carbonaceous biochemical oxygen demand.

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 Town of Middleburg Wastewater Treatment Plant located at 500 East Washington Street, in Middleburg, Virginia, a plant which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Middleburg.

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

12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

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. VA0024775, which was reissued under the State Water Control Law and the Regulation to the Town of Middleburg on September 19, 2011, and which expires on September 18, 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. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

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. "TKN" means total kjeldahl nitrogen.

22. "The Town" means the Town of Middleburg, a political subdivision of the Commonwealth of Virginia. The Towns is a "person" within the meaning of Va. Code § 62.1-44.3.

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

24. "VAC" means the Virginia Administrative Code.

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

26. "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. The Town owns, and Loudoun Water operates the Plant. The Permit allows the Town to discharge treated sewage and other municipal wastes from the Plant, at a single authorized location (outfall 001), to Wancopin Creek in the Potomac River Basin, in strict compliance with the terms and conditions of the Permit.

2. Wancopin Creek is listed in the Draft 2012 Integrated Water Quality Report as not supporting the Aquatic Life Use due to poor health in the macroinvertebrate community. The wildlife use is fully supporting. The recreation and fish consumption uses were not assessed.

3. In submitting its DMRs as required by the Permit, the Town has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for the weekly concentration average maximum limit for $CBOD_5$ as reported on its January 2012 DMR, for the weekly concentration average maximum limit and monthly concentration average limit for TKN as reported on its March 2012 DMR, and for the weekly concentration average maximum limit and monthly concentration average limit for TKN as reported on its April 2012 DMR.

4. Part I, Section C.1 of the Permit required that the Town submit an Industrial User Survey to DEQ by March 18, 2012. The Town requested an extension on June 15, 2012. DEQ granted this extension request and notified the Town that the Industrial User Survey should be submitted to DEQ by October 31, 2012.

5. On May 29, 2012, the Town reported to DEQ that an unauthorized discharge from its collection system of 10,000 gallons of raw sewage had occurred. The raw sewage was released to an unnamed tributary of Goose Creek from the Windy Hill Pump Station as a result of grease holding the ball floats down at the pump station. The Town submitted a letter to DEQ on May 30, 2012, providing DEQ with the details of this unauthorized discharge.

6. NRO has issued Warning Letter No. W2012-05-N-1002 on May 16, 2012, WL No. W2012-06-N-1001 issued on June 12, 2012, and Notice of Violation No. W2012-07-N-0001 issued on July 9, 2012, to the Town for the aforementioned violations.

7. The Town's operating logs indicate that it discharged treated wastewater from the Wastewater Treatment Plant every day from January 2012 through August 2012.

8. 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."

9. 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.

10. VPDES Permit No. VA0024775, Part II, Section F states that except in compliance with the permit, or another permit issued by the Board, it shall be unlawful for any person to discharge into state waters, sewage, industrial wastes, or any noxious or deleterious substances; or otherwise alter the physical chemical, or biological properties of such state waters and make them detrimental to the public health or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

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 the Town for the Plant, other than VPDES Permit No. VA0024775.

13. The unnamed tributary to Goose Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

14. Based on the data submitted on the January, March, and April DMRs, and notifications submitted by the Town to DEQ regarding the unauthorized discharge and Industrial User Survey, the Board concludes that the Town has violated VPDES Permit No. VA0024775 Part I, Section A.1, Part I, Section C.1, and Part II, Section F, Va. Code § 62.1-44.5 , and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Wastewater Treatment Plant while concurrently failing to comply with conditions of the Permit, by failing to submit an Industrial User Survey as required by the Permit, and by discharging untreated sewage from its collection system, as described in paragraphs C(3) through C(5).

15. DEQ met with the Town on August 7, 2012, to discuss the aforementioned violations, and the steps the Town has taken to prevent and mitigate future violations.

16. In order for the Town to complete its return to compliance, DEQ staff and representatives of the Town 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 the Town, and the Town agrees to:

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

2. Pay pay a civil charge of $3,425.00 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

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

4. The Town consents to venue in the Circuit Court of Loudoun County for any civil action taken to enforce the terms of this Order.

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

    b. The Town 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 Town.

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

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 Town voluntarily agrees to the issuance of this Order.

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

_____
Thomas A. Faha Regional Director
Department of Environmental Quality

----------(Remainder of Page Intentionally Blank)----------

The Town of Middleburg voluntarily agrees to the issuance of this Order.

Date: 1/24/13 By: Martha Mason Semmes, Town Administrator
(Person) (Title)
Town of Middleburg

Commonwealth of Virginia
City/County of Loudoun

The foregoing document was signed and acknowledged before me this 24th day of Jan, 2013, by MARTHA MASON SEMMES who is TOWN ADMINISTRATOR of the Town of Middleburg on behalf of the Town.

Rhonda S North
Notary Public

173701
Registration No.

My commission expires: July 31, 2014

Notary seal:

RHONDA S. NORTH
Notary Public
Commonwealth of Virginia
173701
My Commission Expires Jul 31, 2014

APPENDIX A
SCHEDULE OF COMPLIANCE

The Town of Middleburg shall:

1. Submit an industrial user survey to DEQ for review and approval by March 1, 2013.

2. Evaluate the impact of fats, oils, and grease (FOG) on the collection system and wastewater treatment plant performance. The evaluation shall be submitted to DEQ by February 15, 2013 for review and approval. Based upon the results of the study, and after written notification from DEQ, the Town shall establish and implement a FOG program.

3. Submit an up to-date map of the sanitary sewer collection system servicing the Facility to DEQ by February 15, 2013. Features to include on the map shall be, but are not limited to:
   a. Location and ID# of each manhole;
   b. Location and name of each pump station (regardless of ownership);
   c. State waters (named or unnamed tributaries) in the area of the collection system;
   d. Town limits line

4. Submit a completed Reliability Classification Worksheet for Sewage Pumping Stations for all pump stations owned by the Town to DEQ by February 15, 2013.

5. Submit a list of all pump stations not owned by the Town, but located within the sanitary sewer collection system serving the plant, and contact information for each owner by March 1, 2013. Include any information or agreements for those pump stations, such as; who operates and maintains the pump station; who reports overflow or operational problems at stations to DEQ; whether the Town has no knowledge of the pump station day to day operation.

6. **DEQ Contact**

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

   VA Department of Environmental Quality
   Northern Regional Office
   Attn: Enforcement
   13901 Crown Court
   Woodbridge, VA 22193