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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 Fax (540) 574-7878

Located at 4411 Early Road, Harrisonburg, VA

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO TOWN OF BROADWAY FOR

BROADWAY REGIONAL WASTEWATER TREATMENT FACILITY VPDES Permit No. VA0090263

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 Broadway, regarding the Broadway Regional Wastewater Treatment Facility (WWTF), for the purpose of resolving certain violations of the State Water Control Law and the applicable 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. "Facility" means the Broadway Regional Wastewater Treatment Facility located at 15524 New Market Road, Timberville, Virginia, that treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Broadway, the Town of New Market, and the Town of Timberville, as well as poultry processing wastewater and domestic sewage from Pilgrim's Pride Corporation and Cargill Meat Solutions.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "O&M" means operations and maintenance.
12. "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.
13. "Permit" means VPDES Permit No. VA0090263, which was issued under the State Water Control Law and the Regulation to the Town of Broadway on November 1, 2014 and which expires on October 31, 2019.
14. "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.

15. "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.
16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "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.
19. "TMDL" means Total Maximum Daily Load, and is the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background.
20. "Town" means the Town of Broadway, a political subdivision of the Commonwealth of Virginia. "Town" is a "person" within the meaning of Va. Code § 10.1-1300/§ 10.1-1400/§ 62.1-44.3.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. The Town owns and operates the Facility, which has a design average flow capacity of 2.923 million gallons per day. The Permit authorizes the Town to either discharge treated wastewater from the Facility to the North Fork Shenandoah River from Outfall 003 or land apply treated wastewater to 12 agricultural fields totaling 530.3 acres, in strict compliance with the terms and conditions of the Permit.
2. The North Fork Shenandoah River is located in the Shenandoah River Subbasin and Potomac River Basin and is listed as impaired for aquatic life/benthic and bacteria; it is classified as a Tier 1 water. Sources of the aquatic life/benthic impairment are Municipal (High Density Area) and Non-Point Sources. Sources for the bacteria impairment include Agriculture, Non-Point Sources, and Wildlife Other than Waterfowl. The Facility was included in the North Fork Shenandoah River Bacteria TMDL (represented by E.coli) and in the Chesapeake Bay TMDL.
3. The Town submitted the Permit required DMR for the December 1, 2015 through December 31, 2015 monitoring period, which indicated that it exceeded the discharge limitation contained in Part I.A.1 of the Permit for Total Nitrogen (TN) Calendar Year Concentration Average.
4. On February 12, 2016, DEQ issued Notice of Violation No. W2016-02-V-0001 to the Town of Broadway for the TN effluent limit exceedance for calendar year 2015.
5. On March 28, 2016, the Town responded to the NOV, and explained that the specific cause of the violation was the known failure of the baffle curtains at the Facility, resulting in a loss of denitrification capabilities. The Town provided a plan and schedule for completing corrective actions, and advised that construction of the upgrades had started in December 2015. In addition, the Town requested an Interim Limit for the TN Calendar Year Concentration Average until upgrades at the Facility are completed.
6. The Town's operating logs indicate that it discharged treated wastewater from the Facility throughout the entire month of December 2015.
7. Va. Code § 62.1-44.5 states that: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, 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 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.
9. The Department has issued no permits or certificates to the Town other than VPDES Permit No. VA0090263.

10. The North Fork Shenandoah River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
11. Based on the Town's submittal of the DMR for December 2015, the Board concludes that the Town has violated Va. Code § 62.1-44.5, 9 VAC 25-31-50 and the Permit, by discharging wastewater to State waters while concurrently failing to comply with the conditions of the Permit, as described in Section C above.
12. In order for the Town to return to compliance with the Permit, Regulation and Va. Code § 62.1-44.5, the Town has agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order, and the interim effluent limit as incorporated in Appendix B 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 Appendices A and B of this Order; and
2. Pay a civil charge of \$980 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). If the Department has to refer collection of moneys due under this Order to the Department of Law, the Town 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 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 the City of Richmond 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 _____, 2016.

Amy T. Owens, Regional Director
Department of Environmental Quality

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

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

Date: 10/17/16 By: K O'Brien, TOWN MANAGER
(Person) (Title)
Town of Broadway

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 17th day of
October, 2016, by Kyle O'Brien who is
Town Manager of the Town of Broadway, on behalf of the Town of
Broadway.

Cynthia P. Shifflett
Notary Public

167382

Registration No.

My commission expires: 10/31/2017

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Within 30 days of completing construction of the Facility upgrade in accordance with the Certificate To Construct approved by DEQ on November 23, 2015, but no later than March 31, 2017, the Town shall submit an application for a Certificate To Operate (CTO) for the Facility improvements to DEQ for review and approval. The Town shall respond to comments from DEQ regarding the CTO application within 30 days of receipt of written comments.
2. No later than 14 days following the date identified in the above schedule of compliance the Town 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
3. **DEQ Contact**

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

Tamara Ambler
Enforcement Specialist Senior
VA DEQ –VRO
4411 Early Road; Mailing P.O. Box 3000
Harrisonburg, VA 22980
540-574-7896
540-574-7878
tamara.ambler@deq.virginia.gov

**APPENDIX B
 INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

From the effective date of this Order until completion of the corrective action requirements contained in Appendix A, but in no event later than December 31, 2017, the Town shall monitor and limit the discharge from Outfall No. 003 of Broadway Regional Wastewater Treatment Plan in accordance with VPDES Permit Number VA0090263, except as specified below. This interim limit shall retroactively apply to January 1, 2016.

These requirements shall be construed in light of the Regulation.

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>	
	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
Total Nitrogen – Calendar Year (mg/L) ^c	12	NA	NA	NA	1/Year	Calculated