COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
EVERGREEN COUNTRY CLUB, INC.
FOR
EVERGREEN COUNTRY CLUB SEWAGE TREATMENT PLANT
VPDES Permit No. VA0087891

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 Evergreen Country Club, Inc., regarding the Evergreen Country Club Sewage Treatment Plant 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. "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.

2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "DMR" means Discharge Monitoring Report.

5. "Evergreen" means the Evergreen Country Club, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Evergreen Country Club, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.

6. "Facility" or "Plant" means the Evergreen Country Club Sewage Treatment Plant located at the East side of State Road (SR) 600, approximately 1.5 miles south of SR 701 in Haymarket Virginia, which treats and discharges treated sewage and other municipal wastes, for the Evergreen Country Club located in Prince William County, Virginia.

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

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

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

10. "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.

11. "Permit" means VPDES Permit No. VA0087891, which was issued under the State Water Control Law and the Regulation to Evergreen Country Club, Inc. on June 24, 2008 and which expires on June 23, 2013.

12. "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.

13. "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.

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

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

16. "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.

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

18. "VAC" means the Virginia Administrative Code.

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

20. "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. Evergreen owns and operates the Plant in Haymarket, Virginia. The Permit allows Evergreen to discharge treated sewage and other municipal wastes from the Plant to an unnamed tributary of Chestnut Lick in strict compliance with the terms and conditions of the Permit.

2. Chestnut Lick is located in the Potomac River Basin. Chestnut Lick is a tributary of Bull Run which is listed in DEQ's 305(b) report as impaired for E. coli from unknown sources.

3. In submitting its DMRs, as required by the Permit, Evergreen has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for Total Kjeldahl Nitrogen (TKN), total suspended solids (TSS), and carbonaceous Biochemical Oxygen Demand-5 day (cBOD5), for the months of May and June 2009, for E. coli in June 2009 and failed to meet the minimum requirement for dissolved oxygen (DO) for May 2009. Evergreen indicated that it believes the exceedances were related to increased flow to the Plant due to Inflow and Infiltration (I&I) from precipitation and possible increased activity at the country club. These factors increased the flow causing hydraulic overloading at the Facility. This combined with a malfunction of a decanter limit switch, which led to one of two Sequencing Batch Reactor (SBR) units being inoperable; caused the discharge of sewage sludge to the unnamed tributary and Chestnut Lick as well as contributing to poor performance of the Plant's tertiary filter.

4. DEQ conducted a compliance inspection of the Facility on June 2, 2009, and observed sludge in the unnamed tributary and Chestnut Lick.

5. DEQ issued a Warning Letter for the TKN, TSS, $CBOD_5$ and DO exceedances, WL No. W2009-07-N-1014 issued to Evergreen on July 14, 2009.

6. DEQ issued a Notice of Violation for the discharge of sewage sludge in the unnamed tributary receiving stream and Chestnut Run, NOV No. W2009-07-N-0013 issued to Evergreen on July 31, 2009.

7. DEQ issued a Notice of Violation for the TKN, TSS, $CBOD_5$ and E. coli exceedances, NOV No. W2009-08-N-0010 issued to Evergreen on August 26, 2009.

8. On September 23, 2009, representatives of Evergreen along with the Plant's contract operator, Environmental Systems Service, LTD. (ESS), met with DEQ to discuss the violations. At the meeting, ESS presented DEQ with a plan of corrective actions to address the Permit exceedances, the problems with the tertiary filter and the hydraulic overloading due to Inflow and Infiltration (I&I) occurring at the Plant. The proposed plan is incorporated in Appendix A of the Order.

9. 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."

10. 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.

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 Evergreen other than VPDES Permit No. VA0087891.

13. The unnamed tributary of Chestnut Lick and Chestnut Lick itself are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.

14. Based on the results of the May and June 2009 Discharge Monitoring Reports, the June 2, 2009 inspection, and the September 23, 2009 meeting, the Board concludes that Evergreen has violated the Permit, 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(7), above.

15. In order for Evergreen to complete its return to compliance, DEQ staff and representatives of Evergreen 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 Evergreen Country Club, Inc., and Evergreen Country Club, Inc. agrees to:

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

2. Pay a civil charge of $7,500.00 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

Evergreen Country Club, Inc. 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 Evergreen Country Club, Inc. for good cause shown by Evergreen Country Club, Inc., 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, Evergreen Country Club, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Evergreen Country Club, Inc. 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. Evergreen Country Club, Inc. 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 Evergreen Country Club, Inc. 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. Evergreen Country Club, Inc. 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 occurrence. Evergreen Country Club, Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Evergreen Country Club, Inc. 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 Evergreen Country Club, Inc. 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 Evergreen Country Club, Inc. Nevertheless, Evergreen Country Club, Inc. 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. Evergreen Country Club, Inc. 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

    b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Evergreen Country Club, Inc..

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

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, Evergreen Country Club, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2010.

_____
Thomas A. Faha, Regional Director
Department of Environmental Quality

Evergreen Country Club, Inc. voluntarily agrees to the issuance of this Order.

Date: 2/15/10 By: [signature], General Manager
(Person) (Title)
Evergreen Country Club, Inc.

Commonwealth of Virginia
City/County of Prince William

The foregoing document was signed and acknowledged before me this 16th day of February, 2010, by Bryan K. Dolieslager who is General Mgr. of Evergreen Country Club, Inc., on behalf of the corporation.

[signature]
Notary Public

230617
Registration No.

My commission expires: 6/30/2012

Notary seal:

TERI J. MELVIN
Notary Public
Commonwealth of Virginia
230617
My Commission Expires Jun 30, 2012

APPENDIX A
SCHEDULE OF COMPLIANCE

Evergreen Country Club, Inc. shall:

1. By March 1, 2010, submit to DEQ for its review and approval, a report of Evergreen's system-wide evaluation of the collection system and the Plant which determines the cause(s) of the I&I and hydraulic overloading issues at the Plant. Said evaluation report shall contain a plan and schedule of work for collection system repairs/upgrades and the installation of a sufficiently-sized flow equalization (EQ) tank for the system. Once approved by DEQ, the plan and schedule of work shall become an enforceable part of this Order

2. By March 1, 2010, submit to DEQ for its review and approval, a plan and schedule for the modification and/or replacement of the tertiary filter. Once approved by DEQ, the plan and schedule of work shall become an enforceable part of this Order.

3. By March 1, 2010, submit to DEQ for review and approval a template of a daily O&M check-sheet for use by the operator and monthly submittal with the DMR submissions for the Facility.

Unless otherwise specified in this Order, Evergreen Country Club, Inc. shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Attn: Enforcement Staff
13901 Crown Court
Woodbridge, VA 22193