



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

**CITY OF WINCHESTER
PERCY D. MILLER WTP**

(VPDES Permit No. VA0002631)



SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and the City of Winchester, for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
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.
5. "Order" means this document, also known as a Consent Special Order.
6. "Winchester" or "City" means the City of Winchester, which owns and operates the Percy D. Miller WTP.
7. "WTP" means the Percy D. Miller Water Treatment WTP located in Warren County, Virginia. The Plant treats river water to potable standards resulting in the City's need to discharge treated wastewater from the filtration process.
8. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
9. "Permit" means Virginia Pollutant Discharge Elimination System Permit No. VA0002631 issued to the City of Winchester, which became effective December 1, 2004 and which expires November 30, 2009. The Permit contains effluent limitations controlling the pH, total suspended solids ("TSS"), and total residual chlorine ["TRC"] that the City can discharge from the WTP.
10. "NOV" means Notice of Violation.
11. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.
12. "P.E.R." means preliminary engineering report.
13. "O&M" means operations and maintenance.
14. "SMP" means sludge management plan.

SECTION C: Findings of Fact and Conclusions of Law

1. Winchester owns and operates the Percy D. Miller WTP serving the City and some residents in Frederick County, Virginia, which is the subject of the Permit. The Permit authorizes the discharge of treated wastewater (primarily treated backwash water from the water treatment process) to an unnamed tributary to the North Fork of the Shenandoah River in the Shenandoah River subbasin, Potomac River basin, in strict compliance with the terms and conditions of the Permit.
2. On August 17, 2007, DEQ received a pollution complaint regarding a reddish sludge discharge (and possible fish kill) in the unnamed tributary to which the WTP discharges. On August 17, 2007, DEQ staff conducted an initial investigation during which staff observed reddish sludge in a stream reach of approximately 1.5 miles downstream from the WTP and traced the sludge upstream to the WTP. DEQ staff, however, did not observe any dead fish.

DEQ obtained samples of the sludge from both the tributary and from the WTP's treatment lagoon which showed total iron concentrations of 341,000 mg/kg and 335,000 mg/kg respectively. Ferric chloride is used in the water treatment process. Staff concluded that the reddish sludge in the tributary was discharged from the WTP.

3. On August 20, 2007, DEQ continued the pollution complaint investigation. DEQ staff observed the reddish sludge in the unnamed tributary at a number of locations downstream of the WTP. The WTP staff interviewed by DEQ apparently were unaware of a discharge of sludge or solids. In addition to being the source of the reddish discharge, DEQ staff observed a number of O&M problems at the WTP including:

- a. significant leakage from the wastewater lagoon gate valves,
- b. apparent failure to submit quarterly groundwater monitoring reports as required by the Permit, and
- c. failure to monitor the WTP's sewage treatment plant's Outfall 101 discharges.

DEQ's investigation indicated that the solids release was primarily due to improper operations of the WTP. The WTP's O&M Manual proscribes that the WTP's backwash solids are washed into its settling lagoons. After the lagoons' backwash solids have properly settled, the appropriate gate valve is opened for a period to decant, draw-down and discharge only the lagoons' supernatant, free of solids (draw-down to a point above the settled solids level). However, the WTP's staff apparently did not adequately or properly monitor the decant operations to ensure that solids were not discharged, allowing a significant release of solids to the WTP's receiving stream, the unnamed tributary. The Permit allows the discharge of suspended solids in amounts not to exceed 30 or 45 mg/l. The sludges observed in the tributary indicate discharges of solids far in excess of those amounts.

In addition, as was noted above, DEQ staff observed, during their inspection of August 20th, that there was almost continuous leakage from the treatment lagoon outlet structure's gate valves (three gate valves at different elevations). While DEQ asserts that the leakage was severe, the WTP staff did not consider this leakage to be an unauthorized discharge and, therefore, did not conduct appropriate monitoring and did not report the leakage to DEQ. Lagoon solids were lost through this gate valve leakage.

4. DEQ issued NOV No. W2007-09-V-0012 on September 25, 2007, to Winchester for unauthorized discharge of solids to State waters, failure to report the unauthorized discharge, failure to comply with the reporting requirements of the Ground Water Monitoring Plan and failure to operate the WTP in accordance with the O&M Manual.
5. On October 11, 2007, DEQ met with representatives of the City in informal conference to discuss the NOV. The October 11, 2007, meeting included discussions regarding how the solids spill may have occurred and the need for a plan and schedule

of corrective actions to prevent future spills and address the WTP's O&M and groundwater monitoring issues.

6. On November 1, 2007, WTP personnel notified DEQ of an unauthorized discharge of solids from the WTP. On November 2, 2007, DEQ conducted an investigation of the solids spill to the receiving stream. DEQ staff noted reddish sludge in the WTP's discharge channel and the receiving stream. In addition, the WTP personnel provided DEQ staff with sample results of the Outfall 002 discharge which demonstrated a TRC Permit effluent limitation violation.

This unauthorized discharge of solids was attributed to sediment basin cleanout operations which stirred up solids in the settling lagoon receiving those wastewaters and solids discharged through the leaking gate valves.

7. By submittals dated November 8, 2007 and January 9, 2008, Winchester provided a written plan and schedule of corrective actions to prevent further unpermitted discharges, address the O&M problems, and ensure compliance with the Permit. Sections of this plan and schedule have been incorporated into Appendix A of the Order.
8. DEQ issued NOV No. W2008-01-V-0005 on January 10, 2008, to Winchester for an unauthorized discharge of solids to State waters and for a TRC effluent violation at Outfall 002.
9. The City is to address the WTP's lagoon berm leakage through an upcoming expansion and upgrade of the water treatment plant.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Winchester and Winchester agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Winchester, and Winchester voluntarily agrees, to pay a civil charge of **\$17,520** in settlement of the violations cited in this Order. The civil charge shall be paid **within 30 days** of the effective date of the Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on the check, Winchester shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Winchester, for good cause shown by Winchester, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein in Section C. 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 WTP as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Winchester admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Winchester 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. Winchester declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, 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 enforce this Order.
6. Failure by Winchester 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. Winchester 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. Winchester shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Winchester shall notify the DEQ Regional Director in writing 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 Director of the Valley Regional Office within 24 hours of learning of any condition above, which Winchester 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 Winchester. Notwithstanding the foregoing, Winchester 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. Winchester petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
 - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Winchester.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Winchester from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of Winchester 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 Winchester to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Winchester.
13. By its signature below, the City of Winchester voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of October, 2008.

Amy T. Owens

Amy T. Owens, Regional Director
Department of Environmental Quality

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

By: [Signature]
Title: CITY MANAGER
Date: JUNE 11, 2008

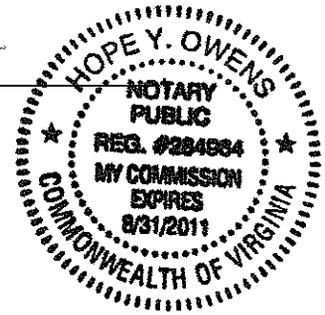
Commonwealth of Virginia
City/County of WINCHESTER

The foregoing document was signed and acknowledged before me this
11TH day of JUNE, 2008, by J. BRANNON GODFREY,
(name)

who is CITY MANAGER of the City of Winchester on behalf of said City.
(title)

[Signature]
Notary Public

My commission expires: AUGUST 31, 2011



APPENDIX A
SCHEDULE OF COMPLIANCE
CITY OF WINCHESTER

1. Winchester has submitted an updated O&M Manual and SMP to DEQ for review and approval. Winchester shall respond to any comments on the O&M Manual and/or SMP **within 30 days** of receipt of written comments.
2. **By June 1, 2008**, Winchester shall begin conducting final effluent testing with a composite sampler and will collect samples from all discharges from the lagoons. Winchester shall continue the increased TSS testing for a period of nine months from the date that increased sampling is begun. Winchester shall submit the results of said sampling with its Discharge Monitoring Report (DMR) for the month in which the sampling takes place.
3. **By May 15, 2008**, Winchester shall complete removal of the solids in the lower lagoon at the WTP
4. **By May 15, 2008**, Winchester shall complete the repair of the lower lagoon gates valves and ensure that the valves close tightly to prevent leakage.
5. **By May 15, 2008**, Winchester shall complete installation of an automatic composite sampler, flow meter and turbidity meter at Outfall 002 and begin utilizing this equipment in sampling Outfall 002.
6. Winchester shall continue to pump and haul the contents of the septic tank for Outfall 101 until such time as a new septic tank and drainfield for on-site sewage treatment is on-line and approved.
7. Winchester shall notify DEQ immediately upon receiving local Health Department approval of the plans and specifications for its new on-site sewage treatment system (Winchester expects to receive such approval **by about April 15, 2008**).
8. **Within 45 days** of approval of the plans and specifications for the new on-site sewage treatment system, Winchester shall advertise and receive bids for construction of the system.
9. **Within 30 days** of receipt of bids, Winchester shall award the contract for the construction of the new on-site sewage treatment system.
10. **Within 90 days** of award of the contract, Winchester shall complete construction of the WTP's new on-site sewage treatment system.
11. **Within 30 days** of completing construction of the new on-site sewage treatment system, Winchester shall provide DEQ with certification that the system has been installed and approved for use by the local Health Department.

12. No later than **14 days** following a date identified in the above schedule of compliance Winchester 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.