



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

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Molly Joseph Ward
Secretary of Natural Resources

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Director

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO THE TOWN OF BOWLING GREEN FOR THE TOWN OF BOWLING GREEN WASTEWATER TREATMENT FACILITY VPDES PERMIT NO. VA0020737

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 Bowling Green, regarding the Bowling Green Wastewater Treatment Facility for the purpose of resolving certain violations of 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. "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 Town of Bowling Green Wastewater Treatment Facility located at 219 Anderson Ave, Bowling Green, Virginia 22427 (Caroline County), which treats and discharges treated sewage from domestic, commercial, and light industrial sources.
10. “IDC” means Initial Demonstration of Capabilities.
11. “MGD” means million gallons per day.
12. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. “NRO” means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
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. VA0020737, which was issued under the State Water Control Law and the Regulation to the Town of Bowling Green on December 11, 2012, and which expires on December 10, 2017.
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. "PReP" means Pollution Response Program.
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. "TKN" means Total Kjeldahl Nitrogen.
23. "Town" means the Town of Bowling Green, a political subdivision of the Commonwealth of Virginia. The Town of Bowling Green is a "person" within the meaning of Va. Code § 62.1-44.3.
24. "TSS" means Total Suspended Solids.
25. "UT" means unnamed Tributary.
26. "Va. Code" means the Code of Virginia (1950), as amended.
27. "VAC" means the Virginia Administrative Code.
28. "VPDES" means Virginia Pollutant Discharge Elimination System.
29. "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 operates the Facility located in the Town of Bowling Green, Virginia. The Permit authorizes the Town to discharge treated wastewater from the Facility, to an UT of the Mattaponi River, in strict compliance with the terms and conditions of the Permit. The design flow of the Facility is 0.25 MGD.
2. The Facility discharges into an unnamed tributary to the Mattaponi River that has been neither monitored nor assessed (and is not categorized as impaired). The segment of Mattaponi River located approximately 1.1 miles downstream from this Facility was not listed as impaired in the 2014 305(b)/303(d) Integrated Report. Ambient and biological monitoring finds the recreation, wildlife, and aquatic life uses fully supporting. The fish consumption use was not assessed. The Mattaponi River is impaired for bacteria starting approximately 8.6 miles downstream from this Facility.
3. In submitting its DMR for the December 2015 monitoring period, as required by the Permit, the Town reported an exceedance of the discharge limitation contained in Part I.A.1 of Permit for the weekly concentration average maximum limit for TSS.
4. DEQ-NRO received an anonymous complaint about a spill that occurred on December 12, 2015, and confirmed the release of digester sludge during an unannounced inspection at the Facility on December 14, 2015. An unknown volume of sludge from this spill event did reach State surface water adjacent to the Facility. The Town failed to notify DEQ within 24 hours after the spill. This incident was assigned IR# 2016-N-1827 in the PReP database.
5. During a February 18, 2016 inspection of the Facility, DEQ observed solids in the pre and post UV treatment units, clarifier and sand filter effluent troughs and a UV intensity measurement of zero. The operator onsite was unable to calibrate field meters used for compliance reporting. The IDCs had not been conducted.
6. During a March 3, 2016 inspection of the Facility DEQ observed that the, IDCs had not been conducted and the UV intensity measurement was also at zero.
7. In submitting its DMR for the April 2016 monitoring period, as required by the Permit, the Town reported an exceedance of the discharge limitation contained in Part I.A.1 of Permit for the weekly concentration average maximum limit for TKN.
8. During a May 18, 2016 inspection of the Facility, DEQ observed that the automatic bar screen was still out of service, the UV system indicated a zero measurement for intensity, and clarifier weir seals were leaking.
9. Part II.A.2 of the Permit states: "Monitoring shall be conducted according to procedures approved under Title 40 Code of Federal Regulations Part 136 or alternative methods

approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.”

10. Part II.A.3 of the Permit states: “The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.”
11. Part II.G of the Permit: Reports of Unauthorized Discharges, states: “Any permittee who discharges sewage...shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery...”
12. Part II.Q of the Permit states: “The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.”
13. 40 C.F.R 136.7.C states: “(1) Incorporate the following twelve quality control elements, where applicable, into the laboratory's documented standard operating procedure (SOP) for performing compliance analyses when using an approved part 136 method when the method lacks such QA/QC procedures. One or more of the twelve QC elements may not apply to a given method and may be omitted if a written rationale is provided indicating why the element(s) is/are inappropriate for a specific method.
 - (i) Demonstration of Capability (DOC); ...
 - (vii) Calibration (initial and continuing), also referred to as initial calibration verification (ICV) and continuing calibration verification (CCV)...”
14. NRO issued a WL for the violations cited above in paragraphs C(3) and C(4): WL No. W2016-02-N-1001, on February 17, 2016.
15. NRO issued a WL for the violations cited above in paragraphs C(5) and C(6): WL No. W2016-05-N-1005, on May 17, 2016.
16. NRO issued a NOV for the violation cited above in paragraph C(7): NOV No. W2016-06-N-0003, on June 16, 2016.
17. NRO issued a NOV for the violations cited above in paragraph C(8): NOV No. W2016-06-N-0011, on June 17, 2016.

18. On November 18, 2016, the Town provided a letter to DEQ stating that: (1) a new oxidation ditch mixer was installed on November 16, 2016; (2) the UV system has been replaced and currently the manufacturer of the sensors was inspecting the system; and (3) a new bar screen system would be installed by the end of February 2017.
19. 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.”
20. 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.
21. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
22. The Department has issued no permits or certificates to the Town other than VPDES Permit No. VA0020737.
23. The UT to the Mattaponi River is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law.
24. Based on the results of the February 18, 2016, March 3, 2016, May 18, 2016, and July 26, 2016, site inspections, and the documentation submitted by representatives of the Town, the Board concludes that the Town has violated the Permit, Va. Code § 62.1-44.5, 9 VAC 25-31-50, and 40 C.F.R. 136.7.C, as described in paragraphs C(3) through C(8), above.
25. 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: agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge \$4,200.00 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). 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 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 County of Caroline 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 occurrence 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 Town 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 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 agrees to the issuance of this Order.

And it is so ORDERED this 10th day of February, 2017.



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

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The Town of Bowling Green voluntarily agrees to the issuance of this Order.

Date: 12/12/2016 By: Stephen H. Manster Town Manager
(Person) (Title)

The Town of Bowling Green

Commonwealth of Virginia

Town/County of Cardone

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

December, 2016, by Stephen H. Manster who is

Town Manager of the Town of Bowling Green, on behalf of the Town.

Melissa Lewis
Notary Public

7592452
Registration No.

My commission expires: 3/31/2018

Notary seal:



APPENDIX A
SCHEDULE OF COMPLIANCE

A. Corrective Action:

No later than March 31, 2017, the Town shall submit to DEQ proof of the installation of the bar screen system replacement. This schedule is an enforceable part of this Order.

B. Submissions:

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

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