



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Douglas W. Domenech
Secretary of Natural Resources

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Director

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BRUNSWICK COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY
FOR
MEHERRIN JAIL SEWAGE PUMP STATION
UNPERMITTED CONSTRUCTION**

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 Brunswick County Industrial Development Authority, regarding the Meherrin Jail Sewage Pump Station, 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. "Brunswick IDA" means Brunswick County Industrial Development Authority, an authority charged with managing industrial development in the County of Brunswick. Brunswick IDA is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "CTC" means certificate to construct.
4. "CTO" means certificate to operate.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
8. "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.
9. "DMR" means Discharge Monitoring Report.
10. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "O&M" means operations and maintenance.
13. "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.
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. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
17. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. “Sewerage system” means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or other wastes to a point of ultimate disposal.
19. “Site” or “Pump Station” means the Meherrin Jail Sewage Pump Station located at Route 1 and Route 85, in Brunswick County Virginia, which pumps untreated sewage from the Meherrin Jail, and anticipated future industrial users, to the Town of Lawrenceville (The “Town”) wastewater treatment plant.
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. “Town” means the town of Lawrenceville in Brunswick County, Virginia.
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. On April 24, 2012, Brunswick IDA submitted an application to the Department for a Certificate to Construct (CTC) the Pump.

2. On May 29, 2012, Department staff observed a discrepancy between the Pump Station design flow in the CTC application and the flow agreed to in the legal contract between the Brunswick IDA and the Town.
3. On June 4, 2012, Department staff telephoned the Town to inquire about the discrepancy and the Town informed the Department that the Pump Station was already built and operating.
4. On June 14, 2012, Department staff conducted a site visit and found the Pump Station constructed and operating.
5. On July 24, 2012, the Department issued an NOV (No. 2012-07-P-201) to the Brunswick IDA for the failure to obtain a CTC and CTO for the Pump Station.
6. On September 21, 2012, a meeting was held between the Department and the Brunswick IDA to discuss the NOV and the Pump Station compliance issues. Attending the meeting was Brunswick IDA's consultant who admitted that Brunswick IDA failed to obtain a CTC and CTO for the Pump Station construction.
7. Va. Code § 62.1-44.19.A states that before any owner may erect, construct, open, expand or operate a sewerage system or sewage treatment works which will have a potential discharge or actual discharge to state waters, such owner shall file with the Board an application for a certificate in scope and detail satisfactory to the Board.
8. Va. Code § 62.1-44.19.C states that the owner shall acquire from the Department of Environmental Quality (i) authorization to construct the systems or works for which the Board has issued a discharge certificate and (ii) upon completion of construction, authorization to operate the sewerage system or sewage treatment works.
9. The Regulation, at 9 VAC 25-790-50.A states that no owner shall cause or allow the construction, expansion or modification of a sewerage system or treatment works except in compliance with a CTC from the director unless as otherwise provided for by this chapter and standards contained in this chapter. Furthermore, no owner shall cause or allow any sewerage systems or treatment works to be operated except in compliance with a CTO issued by the director which authorizes the operation of the sewerage systems treatment works.
10. The Department has issued no permits or certificates to Brunswick IDA.
11. Based on the results of the June 14, 2012 inspection, and the September 21, 2012 meeting, the Board concludes that Brunswick IDA has violated Va. Code §§ 62.1-44.19.A & C. and 9 VAC 25-790-50.A, by failing to obtain a CTC and CTO for the construction of the Pump Station.

12. In order for Brunswick IDA to return to compliance, DEQ staff and representatives of Brunswick IDA 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 Brunswick IDA, and Brunswick IDA agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$3,500 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

Brunswick IDA 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 Brunswick IDA for good cause shown by Brunswick IDA, 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, Brunswick IDA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Brunswick IDA 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. Brunswick IDA 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 Brunswick IDA 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. Brunswick IDA 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. Brunswick IDA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Brunswick IDA 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 Brunswick IDA. Nevertheless, Brunswick IDA 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 Brunswick IDA has completed all of the requirements of the Order;
 - b. Brunswick IDA 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 Brunswick IDA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Brunswick IDA 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 Brunswick IDA 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 Brunswick IDA certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Brunswick IDA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Brunswick IDA.
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, Brunswick IDA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of March, 2013.



Michael P. Murphy, Regional Director
Department of Environmental Quality

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Brunswick County Industrial Development Authority voluntarily agrees to the issuance of this Order.

Date: Nov. 11, 2012 By: *Joan V. Moore* Executive Director
(Person) (Title)

Commonwealth of Virginia
City/County of Brunswick County

The foregoing document was signed and acknowledged before me this 11th day of

November, 2012, by Joan V. Moore who is

Executive Director of Brunswick County Industrial Development Authority, on behalf of the Authority.

Melissa A. Boucher
Notary Public

109478
Registration No.

My commission expires: April 30, 2015

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

1. On or before December 31, 2012, Brunswick IDA shall submit to the Department a new application, with the correct flow information for a Certificate to Operate (CTO) the Pump Station.
2. On or before December 31, 2012, Brunswick IDA shall submit to the Department a legally binding wastewater agreement between Brunswick County, the Brunswick IDA and the Town. The agreement shall reflect the Pump Station design flow of 150,000 gallons per day and include an allocation of the Town's wastewater treatment plant capacity for wastewater flow from the Town of Alberta.
3. DEQ Contact

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

Frank Lupini
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949A Cox Road,
Glen Allen, Virginia 23060
Frank.Lupini@deq.virginia.gov