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# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
VALLEY REGIONAL OFFICE

Molly Joseph Ward  
Secretary of Natural Resources

P.O. Box 3000, Harrisonburg, Virginia 22801  
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David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

## STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO TOWN OF EDINBURG FOR EDINBURG STP VPDES Permit No. VA0020508

### 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 Edinburg, regarding the Edinburg STP, for the purpose of resolving certain violations of the State Water Control Law, the 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. "Edinburg" means the Town of Edinburg, a political subdivision of the Commonwealth of Virginia. "Edinburg" is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility" means the Edinburg STP located at 114 North Whissen Street, Edinburg, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Edinburg.
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. "Permit" means VPDES Permit No. VA0020508, which was reissued under the State Water Control Law and the Regulation to Edinburg on January 1, 2012 and expired on December 31, 2016; was reissued on January 1, 2017 and which expires on December 31, 2021.
15. "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.

16. "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.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "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.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.
23. "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 of Edinburg (Edinburg) owns and operates by outside contractor (Operator) the Facility receiving sewage wastewater generated by Town residents and businesses, with the balance of the flow generated by commercial and industrial contributors. The Facility has a design average flow of 0.175 MGD. The Permit authorizes Edinburg to discharge treated wastewater from the Facility to Stony Creek from Outfall 001, in compliance with the terms and conditions of the Permit.
2. The receiving water Stony Creek is located in the Shenandoah River Basin. Stony Creek is listed in DEQ's 305(b) report as impaired for recreational use due to E. coli and Fecal Coliform and is impaired for Aquatic Life. This segment was included in the EPA approved Stony Creek bacteria Federal TMDL ID#31238. Sources of pollution are listed

as Municipal/High Density Urban Area, Wildlife Other than Waterfowl, Non-Point Sources, and Agriculture.

3. On April 9, 2015, the Operator submitted the Permit-required DMR for March 2015, which indicated an exceedance of the E. coli effluent limitation for that reporting month. No letter of explanation was provided with the DMR indicating the cause of noncompliance.
4. On May 8, 2015, the Operator submitted the Permit-required DMR for April 2015, which indicated an exceedance of the E. coli effluent limitation for that reporting month. The Operator advised in writing that the cause of the exceedance was not known and that additional cleaning of the chlorine contact tank was scheduled to prevent future exceedances.
5. On May 11, 2015, DEQ issued Warning Letter No. W2015-05-V-0113 to Edinburg for an E. coli effluent limitation exceedance in March 2015 and for failure to provide an explanation for the exceedance with the DMR.
6. On May 29, 2015, the Operator provided a written response to Warning Letter No. W2015-05-V0113 outlining possible causes of the high E. coli reading and listing corrective actions undertaken and planned to prevent future exceedances. Among the corrective items listed were increased cleaning of the chlorine contact chamber, increased wasting of sludge from clarifiers, and inspection and monitoring of the rotating biological contactors (RBCs).
7. On June 10, 2015, DEQ issued Warning Letter No. W2015-06-V-1002 to Edinburg for an E. coli effluent limitation exceedance in April 2015.
8. On July 10, 2015, the Operator submitted the Permit-required DMR for June 2015 which indicated exceedances of the BOD<sub>5</sub> concentration maximum and E. coli effluent limitation for that reporting month. The Operator advised in writing that the cause of the exceedances was thought to be laboratory errors.
9. The revised Permit-required DMR for July 2015 indicated an exceedance of the E. coli effluent limitation for that reporting month.
10. On September 9, 2015, the Operator submitted the Permit-required DMR for August 2015 which indicated an exceedance of the E. coli effluent limitation for that reporting month. The Operator advised in writing that the exceedance was thought to be caused by solids in the chlorine contact tank and that routine cleaning of the contact tank was scheduled to prevent future exceedances.
11. On October 9, 2015, DEQ issued Warning Letter No. W2015-10-V-1006 to Edinburg for an E. coli effluent limitation exceedance in August 2015.

12. On October 9, 2015, the Operator submitted the Permit-required DMR for September 2015, which indicated an exceedance of the E. coli effluent limitation for that reporting month. The Operator advised in writing that the cause of the exceedance was not known and that in-house noncompliance testing of TSS, E. coli, and pH at various points throughout the Facility's treatment process was scheduled to identify the cause of the problem
13. On November 9, 2015, the Operator submitted the Permit-required DMR for October 2015 which indicated an exceedance of the E. coli effluent limitation for that reporting month. The Operator advised in writing that technical assistance from the Virginia Rural Water Association was being utilized to determine and correct the E. coli problem.
14. On November 12, 2015, DEQ issued Warning Letter No. W2015-11-V-1001 to Edinburg for an E. coli effluent limitation exceedance in September 2015.
15. On December 11, 2015, DEQ issued Notice of Violation No. W2015-12-V-0001 to Edinburg for E. coli effluent limitation exceedances in July and October 2015.
16. On January 14, 2016, DEQ staff met with Edinburg, representatives of the contract operating company, and a representative of the Virginia Rural Water Association to discuss the NOV, the Facility's compliance issues, and to review a number of process and equipment changes implemented by the Facility operator to mitigate high E. coli.
17. On April 14, 2016, consulting engineering firm Pennoni (Pennoni) provided on behalf of Edinburg a Preliminary Analysis of Operational Data (report) intended to analyze the periodic poor performance of the Facility in meeting the E. coli effluent limitation. The report included an analysis of factors affecting disinfection performance, but provided no conclusive cause or remedy for the E. coli violations.
18. On May 24, 2016, the Operator reported an unauthorized discharge of an unknown quantity of untreated sewage to Stony Creek due to a clogged drain line.
19. On July 8, 2016, Pennoni submitted on behalf of Edinburg a revised report concluding that elevated ammonia concentrations in the treated effluent prior to chlorination may have been a factor in the disinfection issues and E. coli violations in 2015. The report recommended increasing detention time in the chlorine contact tank, increasing the chlorine dosing rate to maintain a specific minimum daily average concentration and a specific minimum free chlorine concentration, and attempting to foster nitrification in the treatment process.
20. On July 13, 2016, the Operator reported an unauthorized discharge of 2,300 gallons of untreated sewage to Stony Creek due to a valve accidentally left open.
21. On August 10, 2016, the Operator submitted the Permit-required DMR for July 2016, which indicated an exceedance of the E. coli average and BOD<sub>5</sub> concentration maximum effluent limitations for that reporting month.

22. On September 16, 2016, DEQ issued Warning Letter No. W2016-09-V-1005 to Edinburg for E. coli concentration average and BOD<sub>5</sub> concentration maximum effluent limitation exceedances in July 2016 and treatment system overflows reported in May and July 2016.
23. On September 24, 2016, the Operator advised that the E. coli effluent limitation exceedance in July 2016 was due to operator error in collecting E. coli samples and that training had been provided to ensure future samples were collected correctly.
24. On October 10, 2016, the Operator submitted the Permit-required DMR for September 2016 which indicated an exceedance of the E. coli effluent limitation for that reporting month. The Operator advised in writing that the exceedance was likely due to solids collecting in the chlorine contact tank and that cleaning of the tank was scheduled.
25. On November 15, 2016, DEQ issued Warning Letter No. W2016-11-V-1008 to Edinburg for the E. coli effluent limitation exceedance in September 2016. DEQ advised that the written explanation submitted with the DMR was inadequate and requested additional information regarding planned corrective actions.
26. On December 14, 2016, DEQ issued Notice of Violation No. W2016-12-V-0002 to Edinburg for the E. coli effluent limitation exceedance in September 2016 and failure to respond to the request in Warning Letter No. 2016-11-V-1008 for additional information.
27. Va. Code § 62.1-44.5 states: “[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.”
28. 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.
29. Permit Part I.A.1 establishes minimum and maximum numeric discharge limitations for specified effluent characteristics.
30. Permit Part II.F.1 states: “Except in compliance with this permit, or another permit 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.”
31. Permit Part II.I.3 states: “The permittee shall report all instances of noncompliance not reported under Parts II.I.1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II.I.2.”
32. The Department has issued no permits or certificates to this Facility other than VPDES Permit No. VA0020508.
33. The receiving water Stony Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.

34. Based on the DMRs submitted for March 2015, April 2015, June 2015, July 2015, August 2015, September 2015, October 2015, July 2016, and September 2016, the Board concludes that Edinburg has violated Va. Code §62.1-44.5, 9 VAC 25-31-50, and the Permit, by discharging treated sewage and municipal wastes from the Facility and by discharging untreated or partially treated sewage from the Facility, while concurrently failing to comply with the conditions of the Permit, as described in Section C above.
35. On December 20, 2016 Edinburg responded to DEQ in writing that it was unaware that the Operator did not provide the requested additional information and requested a meeting with DEQ.
36. On January 11, 2017, DEQ staff met with Edinburg, representatives of the contract operating company, and representatives of Pennoni to discuss the NOV and options for ensuring the Facility's sustained compliance with effluent limitations.
37. On January 25, 2017, Edinburg submitted a letter to DEQ documenting its intent to develop a Preliminary Engineering Report (PER) in Summer 2017 that provides a plan and schedule for undertaking corrective actions at the Facility
38. In order for Edinburg to return to compliance, DEQ staff and representatives of Edinburg have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

1. Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Edinburg and Edinburg agrees to perform the actions described in Appendix A of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Edinburg for good cause shown by Edinburg, 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, in NOV No. W2015-12-V-0001 dated December 11, 2015, in NOV No. W2016-12-V-0002 dated December 14, 2016, Warning Letter No. W2015-05-V0113 dated May 11, 2015, Warning Letter No. W2015-06-V-1002 dated June 10, 2015, Warning Letter No. W2015-10-V-1006 dated October 9, 2015, Warning Letter No. W2015-11-V-1001 dated November 12, 2015, Warning Letter No. W2016-09-V-1005 dated September 16, 2016, and Warning Letter No. W2016-11-V-1008 dated November 15, 2016. 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, Edinburg admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Edinburg 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. Edinburg 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 Edinburg 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. Edinburg 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. Edinburg shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Edinburg 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 Edinburg. Nevertheless, Edinburg 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 Edinburg has completed all of the requirements of the Order;
  - b. Edinburg 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 Edinburg.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Edinburg 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 Edinburg 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 Edinburg 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 Edinburg to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Edinburg.
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, Edinburg voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 31<sup>st</sup> day of July, 2017

  
\_\_\_\_\_  
Amy Thatcher Owens, Regional Director  
Department of Environmental Quality

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

Date: May 30, 2017 By: [Signature], Mayor  
Daniel J. Harshman Mayor  
Town of Edinburg

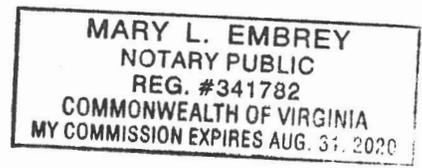
Commonwealth of Virginia  
City/County of Shenandoah

The foregoing document was signed and acknowledged before me this 30 day of May, 2017, by Daniel J. Harshman who is Mayor of the Town of Edinburg, on behalf of the corporation.

[Signature]  
Notary Public  
341782  
Registration No.

My commission expires: Aug. 31, 2020

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

1. **By September 1, 2017**, Edinburg shall complete an analysis of the Facility's design and operation issues and submit to DEQ for review and approval a plan and schedule, including a Preliminary Engineering Report (PER) of rehabilitation and/or replacement/corrective actions to ensure that the Facility can consistently comply with effluent limitations. Edinburg shall respond to any written comments from DEQ regarding the plan and schedule/PER **within 30 days** of receipt. Upon approval of the corrective action plan, the plan and schedule shall be incorporated by reference into this Order and become enforceable as part of this Order.

### GENERAL REQUIREMENTS

2. Edinburg shall submit quarterly progress reports to DEQ, with the first report being due **October 10, 2017**. Subsequent Progress Reports will be due by **January 10, April 10, July 10, and October 10**, along with the Facility's Discharge Monitoring Report until the cancellation of this Order. The quarterly progress reports shall contain:
  - a. a summary of all work completed since the previous progress report in accordance with this Order;
  - b. a projection of the work to be completed during the upcoming quarterly period in accordance with this Order; and
  - c. a statement regarding any anticipated problems in complying with this Order.
3. No later than **14 days** following a date in the above schedule of compliance Edinburg shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of non-compliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.
4. **DEQ Contact**

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

**Tamara Ambler**  
**Enforcement Specialist Senior**  
**VA DEQ –Valley Regional Office**  
**P.O. Box 3000**  
**Harrisonburg, VA 22801**  
**(540) 574-7896 Phone**  
**(540) 574-7878 Fax**  
**tamara.ambler@deq.virginia.gov**