



# *COMMONWEALTH of VIRGINIA*

*DEPARTMENT OF ENVIRONMENTAL QUALITY*  
TIDEWATER REGIONAL OFFICE

Molly Joseph Ward  
Secretary of Natural Resources

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David K. Paylor  
Director

Craig R. Nicol  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
City of Franklin  
FOR  
The City of Franklin Wastewater Treatment Plant  
VPDES Permit No. VA0023922**

## **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 City of Franklin, regarding the City of Franklin Wastewater 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. "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. "City" means the City of Franklin, a political subdivision of the Commonwealth of Virginia. The City is a "person" within the meaning of Va. Code § 62.1-44.3.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
7. "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.
8. "DMR" means Discharge Monitoring Report.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility" means the City of Franklin Wastewater Treatment Plant located at 501 South Main Street in Franklin, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the City.
11. "I&I" means infiltration and inflow.
12. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. "O&M" means operations and maintenance.
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. VA0023922, which was issued under the State Water Control Law and the Regulation to the City on July 1, 2014 and which expires on June 30, 2019.
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. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "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.
21. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.
25. "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 City owns and operates the Facility. The Permit allows the City to discharge treated sewage and other municipal wastes from the Facility, to the Blackwater River, in strict compliance with the terms and conditions outlined in the Permit.
2. The Blackwater River is located in the Chowan and Dismal Swamp River Basin watershed. The Blackwater River is listed in DEQ's 305(b) report as impaired for dissolved oxygen, mercury in fish tissue, and E. coli.

3. Part I.A of the Permit provides that the City shall limit and monitor discharges from Outfall 001.
4. In submitting its DMRs, as required by the Permit, the City has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for ammonia, zinc, and E. coli, for the April through June, and September 2016 reporting periods.
5. The City has violated condition Part I.A of the Permit as noted in paragraph C(4) of this Order.
6. Parts I.A, II.A.3, and II.B.2 of the Permit require that the City record flow continuously, calibrate and perform maintenance on all monitoring instruments periodically, and retain records of all monitoring information for three years.
7. Part I.B.2 of the Permit requires that the City limit and monitor E. coli if the City chooses an alternative disinfection method to chlorination.
8. Part II.A of the Permit requires that Permit samples and measurements be representative of monitored activity.
9. Part II.Q of the Permit requires that the City operate and maintain all facilities and systems of treatment and control.
10. 9 VAC 25-790-770 of the Sewage Collection and Treatment Regulations states that at least one ultra-violet (UV) intensity meter within each lamp assembly must be provided to indicate operating conditions.
11. During a Facility inspection on September 16, 2014, DEQ staff documented the following compliance deficiencies:
  - a. The City did not have available for review flow monitoring information;
  - b. The Local Operator Interface (the control panel for the UV system) was not operational;
  - c. The intensity meters for the UV system were either not working or not working properly;
  - d. A review of the Facility's records indicate that the City had not reported or qualified its E. coli discharge monitoring results that exceeded the upper quantification limit for the analytical method.
12. The City has violated conditions Part I.A, Part II.B.2, Part I.B.2, Part II.A, Part II.I.3, and Part II.Q of the Permit, and 9 VAC 25-790-770, as noted in paragraph C(11) of this Order.

13. TRO issued a WL and NOV's for Permit limit exceedances and Permit compliance deficiencies as follows: WL No. 2016-02-T-1066, issued February 10, 2015; NOV No. W2015-01-T0001, issued January 27, 2015; and NOV No. W2016-08-T-0006, issued August 15, 2016.
14. The City's operating logs indicate that it discharged treated wastewater from the Facility every day from September 2014 through September 2016.
15. 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."
16. 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.
17. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
18. The Department has issued no permits or certificates to the City other than VPDES Permit No. VA0023922.
19. The Blackwater River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
20. Based on the results of the September 2014 inspection and documentation provided to DEQ by the City, the Board concludes that the City 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 Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(4) and C(11), above.
21. In order for the City to return to compliance, DEQ staff and representatives of the City 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 City, and the City agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$10,431.00 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 City shall include its Federal Employer Identification Number (FEIN) **54-6001284** 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 City 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 the consent of the City for good cause shown by the City, 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 and in WL No. W2016-05-T-1004, issued May 9, 2016; NOV No. W2015-01-T0001, issued January 27, 2015; and NOV No. W2016-08-T-0006, issued August 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, the City admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The City 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. The City 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 City 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 City 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. The City shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City 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 the City. Nevertheless, the City 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 City has completed all of the requirements of the Order;
  - b. The City 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 City.

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

And it is so ORDERED this 18<sup>th</sup> day of May, 2017.

Craig R Nicol

Craig R Nicol, Regional Director  
Department of Environmental Quality

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

Date: 3/28/17 By: R. Randy Martin City Manager  
(Person) (Title)  
The City of Franklin

Commonwealth of Virginia  
City/County of Franklin

The foregoing document was signed and acknowledged before me this 28<sup>th</sup> day of March, 2017, by R. Randy Martin who is City Manager of the City of Franklin, on behalf of the City.

Teresa L. Rose-McQuay  
Notary Public

7633865  
Registration No.

My commission expires: Feb. 28, 2019

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

1. The City shall submit to DEQ a corrective action plan (“CAP”) and schedule for review and approval by December 31, 2017. The CAP shall include:
  - a. A plan to achieve and maintain consistent compliance with Permit effluent limits;
  - b. Measures to report E. coli on DMRs correctly;
  - c. Actions the City has taken and plans to take to address I&I and solids losses during high flow periods.
2. Upon approval, the CAP and schedule shall become a part of and enforceable under the terms of this Order.
2. Unless otherwise specified in this Order, the City shall submit all requirements of Appendix A of this Order to:

Craig R. Nicols  
Regional Director  
VA DEQ – Tidewater Regional Office  
5636 Southern Boulevard  
Virginia Beach, Virginia