



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO POWHATAN COUNTY FOR Dutoy Creek WWTP VPDES PERMIT NO. VA0090727

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 County of Powhatan, regarding Dutoy Creek 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. "The County" means the County of Powhatan, a political subdivision of the Commonwealth of Virginia. The County 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" or "Plant" means the Dutoy Creek Wastewater Treatment Plant located at 2040 Anderson Highway in Powhatan, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the County of Powhatan.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "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.
13. "Permit" means VPDES Permit No. VA0090727 which was reissued under the State Water Control Law and Regulation to the County of Powhatan on September 18, 2007, with an expiration date of September 17, 2012, and which has been administratively continued.
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. "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 the Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. The County owns and operates the Plant. The Permit allows the County to discharge treated sewage and other municipal wastes from the Plant to an unnamed tributary to Dutoy Creek, in strict compliance with the terms and conditions of the Permit.
2. The unnamed tributary (UT) to Dutoy Creek is located in the James River Basin. During the 2010 305(b)/303(d) Integrated Water Quality Assessment, the tributary was not assessed for any Designated Use and was therefore considered a Category 3A water. The Bacterial total maximum daily load (TMDL) for the James River and Tributaries, City of Richmond, was approved by the EPA on November 4, 2010. The facility received an E. coli wasteload allocation of 4.36E+11 cfu/year. In addition, the Chesapeake Bay TMDL was approved by the EPA on December 29, 2010. The TMDL addresses dissolved oxygen and submerged aquatic vegetation (SAV) impairments in the Chesapeake Bay and its tidal tributaries by allocating total nitrogen, total phosphorus, and total suspended

solids to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. The facility was included in the aggregated wasteload allocations for nonsignificant wastewater dischargers in the upper tidal freshwater James River estuary. The receiving stream is considered a Tier 1 water. It is a designated Public Water Supply.

3. In submitting its DMRs, as required by the Permit, the County has indicated that it exceeded discharge effluent limitations contained in Part I.A.1 of the Permit for total recoverable zinc (Zn), average and maximum concentration, for the months of August 2010 and January 2011, and for total recoverable copper(Cu) and Zn , average and maximum concentration, for the months of September 2010, October 2010, and December 2010.
4. On February 17, 2011, DEQ issued a Notice of Violation (NOV) No. W2011-02-P-0005 to the County for the zinc and copper exceedences of the effluent limitations contained in the Permit.
5. On February 28, 2011 the County called and emailed DEQ in response to the NOV and discussed the actions the County has been taking regarding the violations cited in the NOV. The County stated that it had hired an engineering consulting firm to identify the sources of Zn and Cu and methods to improve Zn and Cu removal from the Plant discharge. The County reported that it had requested that the high school use Zn free floor cleaning products; to address elevated Cu levels coming from the high school discharge, the high school flushed the residue from its hot water tanks that contain copper heating coils; the County discontinued the receipt of septage from outside customers, continue to receive quarterly test results from its strong waste customers, and continue to enforce the County Water and Sewer Ordinance.
6. On May 10, 2011, DEQ met with the County to discuss continued efforts taken by the County to address the Zn and Cu exceedences. The County reported that its consulting firm was performing pilot bench tests evaluating treatment options for reducing Zn and Cu including the addition of metal salts, ion exchange options, and pH adjustment to reduce metal solubility. The County agreed to submit a plan and schedule to address the Zn and Cu exceedences. The County provided a plan and schedule to DEQ on July 29, 2011.
7. On September 9, 2011, DEQ issued NOV No. W2011-09-P-0001 to the County for exceeding the Zn effluent limitations for the months of March, April and July 2011, and for failing to meet the dissolved oxygen (DO) minimum concentration effluent limitation for the month of April 2011 as contained in the Permit. The County met with DEQ on August 25, 2011, to discuss the corrective actions taken to address the violations cited in the NOV. The County reported that it continued to work with the schools that discharge to the Plant (although the school's cleaning contractor was using a Zn "free" cleaning product, testing of the product showed that it contained Zn), were conducting Thio-red pilot studies, clearing out the sludge holding tank, and looking at a water reuse system.

8. On March 8, 2012, DEQ issued NOV No. W2012-03-P-0005 to the County for exceeding the Zn effluent limitations for the months of August 2011 through January 2012, for exceeding the Cu effluent limitations for the months of August and November 2011, for failing to meet the DO effluent limitations for the months of August and December 2011, and for exceeding the total suspended solids (TSS) effluent limitation average loading for the month of January 2012. The County met with DEQ on March 27, 2012, in response to the NOV and discussed continuing corrective actions the County is taking. At the meeting, the County agreed to submit an updated plan and schedule of corrective actions. The County submitted the plan and schedule to DEQ on May 25, 2012.
9. A file review of DMRs submitted by the County for the months of February 2012 through January 2013, show that the County failed to meet effluent limits for DO for the months of February through April 2012, TSS and Total Kjeldahl Nitrogen (TKN) for the months of March and May 2012, and Zn for the months of March through May 2012, and for July 2012. The DO violations were attributed to unseasonably warm temperatures and to water collecting in portions of the tertiary filter with subsequent loss of oxygen. To improve the DO, the water is now drained from the bottom of the tertiary filter. The TKN and TSS violations were attributed to denitrification issues on the day of sampling. The wastewater process was altered so that the plant has time for denitrification before it goes into the settling mode. Polymer was also added to settle solids. The County has complied with effluent limits in the Permit since August 2012.
10. Va. Code § 62.1-44.5 states that: “Except 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.”
11. The Regulation, at 9 VAC 25-31-50, 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.
12. Va. Code § 62.1-44.15(a) states that a VPDES permit is a “certificate” under the statute.
13. The Department has issued no other VPDES permits or certificates to the County for the Facility other than VPDES Permit No. VA0090727.
14. The UT is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
15. Based on the results of the DMRs submitted for the months of August 2010 through October 2010, December 2010 through January 2011, March 2011 through April 2011, and July 2011 through January 2012, February 2012 through May 2012, July 2012, and the meetings with the County, the Board concludes that the County 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 Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(9) above.

16. The County has continued to identify and eliminate sources of Zn and Cu entering the wastewater treatment collection system; and has modified operation of the Plant to optimize plant performance. The County has demonstrated compliance with the Permit since August 2012.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the County, and the County agrees to:

1. Pay a civil charge of **\$5,200** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payments 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 County 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 the County for good cause shown by the County, 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 County admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The County consents to venue in the Circuit Court of the County of Richmond for any civil action taken to enforce the terms of this Order.

5. The County 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 County 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 County 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 County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County 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 County 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 County. Nevertheless, the County 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 County has completed all of the requirements of the Order;
 - b. the County 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 County.

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

And it is so ORDERED this 17th day of JUNE, 2013.



Michael P. Murphy, Regional Director
Department of Environmental Quality

The County of Powhatan voluntarily agrees to the issuance of this Order.

Date: 3/1/2013 By: Patricia A. Wales County Administrator
(Person) (Title)

Commonwealth of Virginia

The County/County of Powhatan

The foregoing document was signed and acknowledged before me this 1st day of

MARCH, 2013, by Patricia Wales who is

County Administrator of the County of Powhatan.

Melissa Love
Notary Public

7316144
Registration No.

My commission expires: 6/30/2014

Notary seal:

