



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

James J. Golden
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
NORTHUMBERLAND COUNTY
FOR
REEDVILLE SANITARY DISTRICT
VPDES Permit No. VA0060712**

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 Northumberland County, regarding the Reedville Sanitary District 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. "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" or "Plant" means the Reedville Sanitary District a wastewater treatment plant located at 152 Menhaden Road, Reedville, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of Reedville.
10. "Northumberland" means Northumberland County, a political subdivision of the Commonwealth of Virginia. Northumberland is a "person" within the meaning of Va. Code § 62.1-44.3.
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. VA0060712, which was issued under the State Water Control Law and the Regulation to Northumberland on August 16, 2016 and which expires on July 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. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
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. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Northumberland owns and operates the Facility in Reedville, Virginia. The Permit allows Northumberland to discharge treated sewage and other municipal wastes from the Facility, to Cockrell Creek, in strict compliance with the terms and conditions of the Permit.
2. Cockrell Creek is located in the Chesapeake Bay/Atlantic/Small Coastal Basin Cockrell Creek is listed in DEQ's 305(b) report as impaired for aquatic life and fish consumption use. During the 2018 305(b)/303(d) Integrated Water Quality Assessment, the segment of Cockrell Creek

to which the Facility discharges was assessed as a Category 5D water. The Water Quality Standard is not attained here as the Total Maximum Daily Load (TMDL) for a pollutant(s) have been developed but one or more pollutants are still causing impairment requiring additional TMDL development.”) The Aquatic Life Use is impaired due to inadequate submerged aquatic vegetation (SAV) in the CB5MH estuary. The Fish Consumption Use is impaired due to a Virginia Department of Health (VDH) advisory for PCBs in the Chesapeake Bay and its small coastal tributaries. The Recreation Use was fully supporting and the Wildlife Use was not assessed. The Shellfish Use is considered removed due to a VDH shellfish harvest prohibition.

3. The Chesapeake Bay TMDL was approved by the EPA on December 29, 2010. The TMDL allocates loads for total nitrogen, total phosphorus, and total suspended solids to protect the dissolved oxygen and SAV criteria in the Chesapeake Bay and its tidal tributaries. The STP is considered a significant nutrient discharger and was assigned the following wasteload allocations: total nitrogen – 2,436 lbs/yr, total phosphorus – 183 lbs/yr, and total suspended solids – 18,273.36 lbs/yr. The Facility has registered in the Nutrient General Permit under permit number VAN020101.
4. The Facility was addressed in the Cockrell Creek Bacteria TMDL, which was approved by the EPA on December 8, 2008 and by the Board on April 28, 2009. The TMDL states that the “Reedville Sanitary District Sewage Treatment Plant (VA0060712), does not require a wasteload allocation (WLA).” Cockrell Creek has historically been considered a Tier 1 water and antidegradation has not been applied during modeling efforts.
5. On November 18, 2018, Northumberland reported an unauthorized discharge of approximately 118,000 gallons from the polishing pond at the Facility due to heavy influent after a storm event.
6. In submitting its DMRs, as required by the Permit, Northumberland has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for ammonia as nitrogen (average and maximum concentrations), for the December 2018, January and February 2019 monitoring periods. In addition, Northumberland reported an exceedance of the total annual nitrogen discharge limit in December 2018. Northumberland indicated that it believed the exceedances were related to the inability of the Plant to maintain a large enough biomass to handle treatment in cold weather.
7. On March 4, 2019, Northumberland reported an unauthorized discharge of approximately 122,400 gallons from their polishing pond to heavy rainfall and the Facility’s lack of system volume to detain flow during heavy storm events.
8. On April 16, 2019, the Department emailed Northumberland requesting submittal of the groundwater monitoring data for the first quarter of 2019 which was due on April 10, 2019. Northumberland responded that day stating they had overlooked taking groundwater samples in the first quarter of 2019, and they would proceed immediately with groundwater testing.

9. On May 2, 2019, DEQ issued Notice of Violation (NOV) No. W2019-04-P-0005 to Northumberland for the unauthorized discharges and the ammonia as nitrogen and total nitrogen permit limit exceedances. Northumberland responded to the NOV by submitting a plan and schedule of corrective action to address the ammonia as nitrogen exceedances which will require securing capital and construction of a major upgrade.
10. On August 27, 2019, the Department met with representatives of Northumberland County to discuss the violations that lead to the NOV.
11. On October 7, 2019, Northumberland notified the Department that they failed to obtain groundwater samples for the 3rd quarter of 2019.
12. On February 10, 2020, a Department review of Facility files indicated that groundwater monitoring data due by April 10, 2019 and October 10, 2019, were never received. In addition, in submitting its Permit required DMRs, Northumberland has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for ammonia as nitrogen (average and maximum concentrations) for the December 2019 monitoring period, and total nitrogen and total phosphorous average concentration for the 2019 calendar year.
13. On February 11, 2020, the Department issued NOV No. W2020-02-P-0003 to Northumberland for the failure to submit the groundwater monitoring results due April of 2019 and October of 2019 and for ammonia as nitrogen, total nitrogen, and total phosphorous permit limit exceedances.
14. Northumberland's operating logs indicate that it discharged treated wastewater from the Facility every day from November 1, 2018 through March 1, 2020.
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. The Department has issued no water discharge permits or certificates to Northumberland' Reedville Sanitary District other than VPDES Permit No. VA0060712.
18. Cockrell Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

19. Based on the results of the Department review of DMRs submitted by Northumberland for the December 2018 through February 2020 monitoring periods; the unauthorized discharge reports on November 18, 2018 and March 4, 2019; and, the August 27, 2019 meeting, the Board concludes that Northumberland has violated the Permit and 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 above.
20. In order for Northumberland to return to compliance, DEQ staff and representatives of Northumberland 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 Northumberland, and Northumberland agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$8,809 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
December 15, 2020	\$2,200 or balance
March 15, 2021	\$2,200 or balance
June 15, 2021	\$2,200 or balance
September 15, 2021	\$2,209

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Northumberland. Within 15 days of receipt of such letter, Northumberland shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
4. 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

Northumberland 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, Northumberland 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 Northumberland for good cause shown by Northumberland, 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, Northumberland admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Northumberland 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. Northumberland 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 Northumberland 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. Northumberland 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. Northumberland shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Northumberland 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.

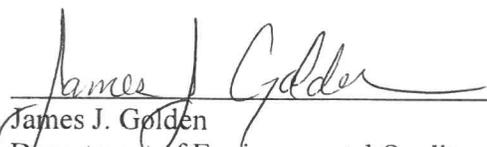
9. This Order is binding on the parties hereto, and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Northumberland. Nevertheless, Northumberland agrees to be bound by any compliance 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 Northumberland has completed all of the requirements of the Order;

- b. Northumberland 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 Northumberland.

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

And it is so ORDERED this 22 day of September, 2020.


James J. Golden
Department of Environmental Quality
Piedmont Regional Director

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Northumberland County voluntarily agrees to the issuance of this Order.

Date: 7/13/2020 By: E. Luttrell Tadlock County Administrator
(Person) (Title)
Northumberland County

Commonwealth of Virginia
City/County of Northumberland

The foregoing document was signed and acknowledged before me this 13 day of
July, 2020, by E. Luttrell Tadlock who is
County Administrator of Northumberland County, on behalf of the County.

Dana V. Wilson
Notary Public

7037310
Registration No.

My commission expires: 4/30/22

Notary seal:

