



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
TIDEWATER REGIONAL OFFICE

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Craig R. Nicol  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
WASH CITY L.L.C.  
FOR  
WASH CITY  
VPDES Permit No. VAG750068**

## **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 Wash City L.L.C., regarding the Wash City laundry and car wash facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

## **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. "BOD5" means the 5-day Biochemical Oxygen Demand.
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 wastewater treatment plant located at 3278 Lankford Highway, Exmore, Virginia, that treats and discharges treated effluent from Wash City’s co-located business operations of a coin laundry and car wash under VPDES Permit No. VAG750068.
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. VAG750068, which was issued under the State Water Control Law and the Regulation to Wash City on October 16, 2012, modified on September 20, 2016, to recognize laundry operations permit coverage and its associated outfall, and reissued on October 16, 2017, and which expires on October 15, 2022.
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. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. “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.
19. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
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.
24. “Wash City” means Wash City L.L.C, a limited liability corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Wash City is a “person” within the meaning of Va. Code § 62.1-44.3.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Wash City owns and operates the Facility. The Permit allows Wash City to discharge effluent from the Facility to an unnamed tributary to Nassawadox Creek, in strict compliance with the terms and conditions of the Permit.
2. Nassawadox Creek is located in the Chesapeake Bay/Atlantic and Small Coastal Basin. Nassawadox Creek is listed in DEQ’s 305(b) report as impaired for dissolved oxygen, fecal coliform, PCBs in fish tissue, and aquatic plants.

3. On April 21, 2017, based on previously submitted DMRs, DEQ issued Warning Letter Number W2017-04-T-1007 (“April 2017 WL”) to Wash City for exceeding the permit limits for maximum concentration for BOD5 in the 4th quarter of 2016 and the 1st quarter of 2017, as well as E.Coli in the 4th quarter of 2016. Further, Wash City failed to report any of the three above listed instances of noncompliance to DEQ. Wash City responded to the April 2017 WL on July 26, 2017.
4. On August 21, 2017, based on previously submitted DMRs, DEQ issued Warning Letter Number W2017-08-T-1018 (“August 2017 WL”) to Wash City for exceeding the permit limits for maximum concentration for BOD5 and E. Coli in the 2nd quarter of 2017. Further, Wash City failed to report any of the two above listed instances of noncompliance to DEQ. Wash City responded to the August 2017 WL on September 10, 2017.
5. On November 8, 2017, based on previously submitted DMRs, DEQ issued Notice of Violation (“NOV”) W2017-11-T-0002 (“November 2017 NOV”) to Wash City for exceeding the maximum concentration for BOD5 in the 3rd quarter of 2017, and for failure to report the above listed instance of noncompliance to DEQ. Additionally, violations noted in the April 2017 WL and August 2017 WL were included. Wash City responded to the November 2017 NOV on November 15, 2017.
6. On February 9, 2018, based on a previously submitted DMR, DEQ issued NOV W2018-02-T-0001 (“February 2018 NOV”) to Wash City for exceeding the maximum concentration for BOD5 and E. Coli in the 4th quarter of 2017, and for failing to report the proper concentration units for BOD5 in their DMR. Wash City responded to the February 2018 NOV on February 20, 2018.
7. On May 8, 2018, based on a previously submitted DMR, DEQ issued NOV W2018-05-T-0001 (“May 2018 NOV”) to Wash City for exceeding the maximum concentration for BOD5 in the 1st quarter of 2018. Wash City responded to the May 2018 NOV on May 22, 2018.
8. On August 20, 2018, based on a previously submitted DMR, DEQ issued NOV W2018-08-T-0004 (“August 2018 NOV”) to Wash City for exceeding the maximum concentration for BOD5, E. Coli and TSS in the 2nd quarter of 2018.
9. Part I(A)2 of the Permit states, “During the period beginning with the Permittee’s coverage under this general permit and lasting until the permit’s expiration date, the permittee is authorized to discharge wastewater originating from a laundry facility from outfall 002. Such discharges shall be limited and monitored by the permittee as specified below: Maximum discharge limitations: BOD5 60 mg/l; E.Coli 235 CFU/100 m/l.”
10. Part II(I)(3) of the Permit 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).”

11. Part II(C)(2) of the Permit states, “Monitoring reports shall be reported on a DMR or on forms provided, approved or specified by the department.”
12. 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.
13. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
14. The Department has issued no permits or certificates to Wash City other than VPDES Permit No. VAG750068.
15. Nassawadox Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
16. Wash City indicated, and DEQ confirmed by inspections on March 30, 2017, and February 26, 2018, that both rapid sand filters were flooded, indicating improper filtration and drainage into the subsoil.
17. On November 29, 2017, Department staff met with representatives of Wash City to discuss the violations, including Wash City’s written responses and updates.
18. Based on the results of the on March 30, 2017, and February 26, 2018 inspections, the November 29, 2017, meeting, and DMRs submitted resulting in the above noted WLs and NOVs, the Board concludes that Wash City has violated the Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50, by discharging effluent related to laundry operations in exceedance of its discharge limitations, failing to report instances of noncompliance, and failure to report concentration units, as described in paragraph C(3) through C(7), above.
19. In order for Wash City to return to compliance, DEQ staff and representatives of Wash 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 Wash City, and Wash City agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$12,300 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

Wash City shall include its Federal Employer Identification Number (FEIN) [(xx-xxxxxxx)] 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, Wash 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 Wash City for good cause shown by Wash 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 NOV Nos. W2017-11-T-0002, W2018-02-T-0001, W2018-05-T-0001, W2018-08-T-0004, and W2018-11-T-0005 dated November 8, 2017, February 9, 2018, May 8, 2018, August 20, 2018, and November 16, 2018, and Warning Letter Nos. W2017-04-T-1007 and W2017-08-T-1018, issued dated April 21, 2017, and August 21, 2017. 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, Wash City admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Wash 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. Wash 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 Wash 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. Wash 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. Wash City shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Wash 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.

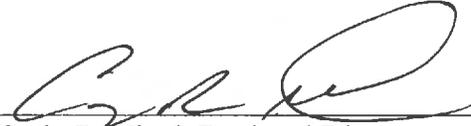
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Wash City. Nevertheless, Wash City agrees to be bound by any compliance date which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

- b. Wash 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 Wash City.

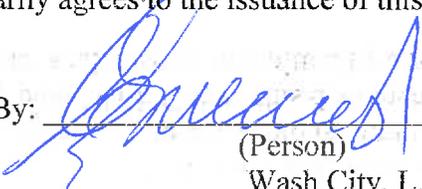
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Wash City from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Wash 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 Wash City 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 Wash City to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Wash 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, Wash City voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28 day of January, 2019

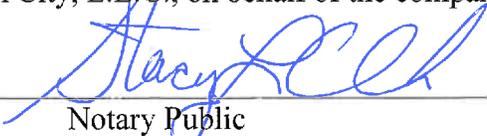
  
\_\_\_\_\_  
Craig R. Nicol, Regional Director  
Department of Environmental Quality

Wash City, L.L.C. voluntarily agrees to the issuance of this Order.

Date: 11/15/2018 By:  OWNER  
\_\_\_\_\_  
(Person) (Title)  
Wash City, L.L.C.

Commonwealth of ~~Virginia~~ Florida  
City/County of Charlotte

The foregoing document was signed and acknowledged before me this 15<sup>th</sup> day of November, 2018, by GreenWay, Fred who is owner of Wash City, L.L.C., on behalf of the company.

  
\_\_\_\_\_  
Notary Public

GG 68734  
\_\_\_\_\_  
Registration No.

My commission expires: 02-01-2021

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

1. Corrective Action Timeline:

- a. Within 60 days from effective date of Order: Wash City shall submit an approvable Corrective Action Plan (“CAP”) for the design and construction/modification of a treatment system resulting in a cessation of the Permit discharge exceedances. The CAP must be sufficient to demonstrate an achievable action plan with the goal of no exceedances of Permit limits. Wash City shall respond to any DEQ comments regarding the CAP within 14 calendar days of receipt.
- b. Within 180 days of CAP Approval: Wash City shall complete construction/modification of the treatment system required in the approved CAP. Wash City shall submit documentation to DEQ indicating when construction/modification is complete. If necessary, Wash City shall submit an updated registration statement.
- c. Within a maximum of three monitoring periods following completion of the treatment system contemplated in 1(b): If the Permit limits specified in the Permit are not achieved for two consecutive monitoring periods within the first three monitoring periods following completion of the treatment system contemplated in 1(b) above, then Wash City shall so advise DEQ within 30 days of this determination and submit a revised CAP for review and approval within 30 days as well. Upon DEQ approval, the revised CAP shall then be implemented by Wash City in accordance with the schedule set forth in the revised CAP. Submittal of DMRs reviewed under this Order shall be extended for additional monitoring periods after modification of the treatment system. The final DMR submittal reviewed pursuant to this Order shall be submitted by October 10, 2020. If Wash City continues to fail to comply with the Permit discharge limitations, further enforcement may result.

2. Unless otherwise specified in this Order, Wash City shall submit all requirements of Appendix A of this Order to:

Enforcement  
DEQ – Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462