



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
COUNTY OF CULPEPER
FOR
CULPEPER COUNTY INDUSTRIAL AIRPARK STP
VPDES Permit No. VA0068586**

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 County of Culpeper, regarding the Culpeper County Industrial Airpark STP, 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. "County of Culpeper" means the County of Culpeper, a political subdivision of the Commonwealth of Virginia. County of Culpeper 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 Culpeper County Industrial Airpark STP located at 13281 Airpark Drive, Culpeper, Virginia 22701, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of County of Culpeper.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
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. VA0068586, which was issued under the State Water Control Law and the Regulation to County of Culpeper on September 1, 2016, and which expires on August 31, 2021.
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. "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.
24. "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. County of Culpeper owns and operates the Plant. The Permit allows County of Culpeper to discharge treated sewage and other municipal wastes from the Plant, to Hubbard Run, in strict compliance with the terms and conditions of the Permit.
2. Hubbard Run is located in the Rappahannock River Basin. Hubbard Run has been neither monitored nor assessed. The Rappahannock River, 2.3 miles downstream from the Facility, is listed in DEQ's 305(b) report as impaired for recreational use due to bacteria.

3. On May 3, 2019, Culpeper County Environmental Services, the County of Culpeper's operating agency for the Facility, reported an unauthorized discharge of approximately 2,650 gallons of treated wastewater mixed with potting soil/vermiculite from the Facility to the receiving stream of Hubbard Run, and determined that the BrightFarms hydroponic greenhouse, a Plant customer at the airpark, had been the source of the material. An inspection of the Facility was conducted by DEQ VPDES compliance staff on May 13, 2019. A Warning Letter (W2019-07-N-1001) was issued on July 16, 2019, for the discharge. A second discharge was reported to DEQ for a similar July 28, 2019, event.
4. DEQ VPDES compliance staff conducted a reconnaissance inspection of the Facility on December 20, 2019, following an anonymous complaint of untreated wastewater being discharged from the plant. Hydroponic planting media was observed by DEQ staff to be leaving the discharge pipe and accumulating in the stream. This ongoing discharge was not verbally reported to DEQ within the mandatory 24-hour time frame, or reported via written notice within 5 days. County of Culpeper alleged that this was due to the staff being unaware of the discharge prior to the DEQ inspection.
5. NRO issued a Notice of Violation for the discharge of untreated effluent: NOV No. W2020-01-N-0009, issued January 27, 2020.
6. On December 27, 2019, County of Culpeper reported an unauthorized discharge of between 100 and 200 gallons of residual polymer in effluent from the wastewater plant which entered into Hubbard Run. The discharge was described in the 5-day notification letter from County of Culpeper as having occurred due to an accidental discharge caused through the repair of chlorine contact tanks; the polymer was cleaned and collected from the stream within several hours.
7. NRO issued a Notice of Violation for the discharge of residual polymer: NOV No. W2020-02-N-0001, issued February 24, 2020.
8. DEQ met with representatives of the County of Culpeper on February 13, 2020, to discuss the violations associated with the Plant, and corrective actions necessary to achieve compliance.
9. County of Culpeper responded to the Notices of Violation by submitting a plan and schedule of corrective action during the period of February 13, 2020, and March 16, 2020, to address the hydraulic and organic overloading of the plant due to the heavy sediment loads from the greenhouse's influent. The proposed plan included the mandatory reporting, pump-and-hauling, and creation of a County pre-treatment program for the greenhouse within 6 months, or the County of Culpeper would discontinue authorization of that facility to send its sewage to the STP. Additionally, the hydroponic greenhouse would be required to implement pretreatment systems to reduce sediment influent to the Plant. Elements of this plan are incorporated into Appendix A.

10. Part II.F of the Permit 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. Part II.G of the Permit states in part that “Any permittee who discharges or causes or allows a discharge of sewage... in violation of Part II.F... shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department within five days of discovery of the discharge.”
12. 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.”
13. 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.
14. The Regulation, at 9 VAC 25-31-730, establishes the responsibility of state and local government to implement the national pretreatment standards and requirements to control pollutants which pass through or interfere with the treatment processes in Publicly Owned Treatment Works (POTWs).
15. Part I.C of the Permit states in part that, “if the permittee or DEQ determines that any IU [industrial user] has potential to adversely affect the operation of the POTW or cause violation(s) of federal, state, or local standards or requirements, the permittee shall develop and submit to DEQ-NRO within one year of written notification by DEQ a pretreatment program for approval.”
16. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
17. The Department has issued several other sewage/wastewater treatment plant permits or certificates to the County of Culpeper in addition to VPDES Permit No. VA0068586.
18. The Hubbard Run is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
19. Based on the discharge notifications of May 3, 2019, and July 28, 2019; the May 13, 2019, and December 20, 2019, inspections; the February 13, 2020, meeting; and the documentation submitted by the County of Culpeper, the Board concludes that the County of Culpeper has violated the Permit and Va. Code § 62.1-44.5, 9 VAC 25-31-50, and 9 VAC 25-31-730 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(1) – C(18), above.

20. In order for County of Culpeper to return to compliance, DEQ staff and representatives of County of Culpeper 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 County of Culpeper, and County of Culpeper agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$4,777.50 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

County of Culpeper 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, County of Culpeper 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 County of Culpeper for good cause shown by County of Culpeper, 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, County of Culpeper admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. County of Culpeper 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. County of Culpeper 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 County of Culpeper 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. County of Culpeper 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. County of Culpeper shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. County of Culpeper 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 County of Culpeper. Nevertheless, County of Culpeper 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 County of Culpeper has completed all of the requirements of the Order;
 - b. County of Culpeper 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 County of Culpeper.

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

And it is so ORDERED this _____ day of _____, 20_____.

Thomas A. Faha, Regional Director
Department of Environmental Quality

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County of Culpeper voluntarily agrees to the issuance of this Order.

Date: 8/27/2020 By: [Signature], Co. Admin.
(Person) (Title)
County of Culpeper

Commonwealth of Virginia
City/County of Culpeper

The foregoing document was signed and acknowledged before me this 27th day of August, 2020, by John Egertson who is County Administrator of County of Culpeper, on behalf of the County.

[Signature]
Notary Public
7849266
Registration No.

My commission expires: 10/31/2023

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. **DEQ-Approved Pretreatment Program:**

- a. The County of Culpeper shall, within one year of the execution date of this order, submit to DEQ for approval a pretreatment program. The pretreatment program shall enable the permittee to control by permit the SIUs, as defined at 9VAC25-31-10, discharging wastewater to the treatment works. The approvable pretreatment program shall contain, at a minimum, those elements listed in Part I.C. of the current VPDES Permit, VA0068586, and those found at 9VAC25-31-800.F. of the VPDES Regulations.
- b. Once approved, the pretreatment program shall be immediately implemented.

2. **Hydroponic Greenhouse Pretreatment System:**

- a. The County of Culpeper shall, within 30 days of the execution of the Order, submit an updated detailed plan to implement interim measures to control discharges of hydroponic planting media from the Plant.
- b. The County of Culpeper shall submit to DEQ-NRO updates on the installation and operations of the hydroponic greenhouse pretreatment system, and other interim control measures, on a quarterly basis by the 10th day of the month following the end of the quarter (for instance, the January through March quarterly update would be due by April 10). The requirement to submit quarterly updates will begin the first full quarter following the execution of the Order, and shall continue until such time the County and DEQ agree in writing that it is no longer warranted.

County of Culpeper shall respond in writing to DEQ comments or requests for information related to the elements of this Order within 14 days.

3. **DEQ Contact**

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

Virginia Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193