



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

Molly Joseph Ward  
Secretary of Natural Resources

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David K. Paylor  
Director

Allen J. Newman, P.E.  
Regional Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Town of Independence FOR Independence Sewage Treatment Plant VPDES Permit No. VA0064424**

#### **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 Town of Independence, regarding the Independence Sewage 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. The "303(d) report" is a subset of the "305(b) report".
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", "Plant" or "STP" means the Independence Sewage Treatment Plant, located at 2805 Beaverdam Road, Independence, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Independence.
10. "Independence" or "Town" means the Town of Independence, a political subdivision of the Commonwealth of Virginia. Independence 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. VA0064424, which was reissued under the State Water Control Law and the Regulation to the Town of Independence on November 13, 2011 and which expires on November 12, 2016.
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. "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. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
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. Independence owns and operates the STP. The Permit allows Independence to discharge treated sewage and other municipal wastes from the STP, to Peach Bottom Creek, in strict compliance with the terms and conditions of the Permit.
2. Peach Bottom Creek is located in the New River Basin, Section 2, Class IV, Special Standards: v. Peach Bottom Creek is listed in DEQ's 305(b) report as impaired for bacteria, with source unknown. A TMDL for E. coli is scheduled to be developed in 2018. The STP will have a wasteload allocation in that TMDL.
3. In submitting its DMRs, as required by the Permit, Independence has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, as described by the chart on the following page:

Parameter	Observations - DMR Monitoring Period and Relevant Reported Monitoring Results									Permit Req.*
	02/14	06/14	07/14	08/14						
Ammonia, as N average concentration (mg/l) (Jun-Dec)		14.1		25						10
Ammonia, as N maximum concentration (mg/l) (Jun-Dec)		19.3		34.4						14
TSS average concentration (mg/l)			126.8	151.5						30
TSS maximum concentration (mg/l)			522.6	476.5						45
TSS average quantity (kg/d)			98.6	129.6						53
TSS maximum quantity (kg/d)			403.3	407.7						79
DO minimum concentration (mg/l)	5.80			7.1						7.5
BOD <sub>5</sub> average concentration (mg/l)			48.3	138.2						30
BOD <sub>5</sub> maximum concentration (mg/l)			132.8	214.6						45
BOD <sub>5</sub> average quantity (kg/d)				118.0						53
BOD <sub>5</sub> maximum quantity (kg/d)			103.9	189.9						79
CL2, Total maximum concentration (mg/l)				1.32						0.06
CL2, Inst. Technical minimum concentration (mg/l)				0.0						0.6
pH, minimum concentration (su)										6.0

4. On August 21, 2014, DEQ staff conducted a compliance inspection at the STP. Due to the appearance of the final effluent, grab samples were collected for laboratory analysis by DCLS. Analyses results include the following: BOD<sub>5</sub> was 203 mg/l, total suspended solids (TSS) was 55 mg/l, and ammonia was 38.1 mg/l. Solids were being washed out of the secondary clarifiers. The discharge from the Facility's outfall was turbid. There was a visible plume in Peach Bottom Creek. This loss-of-solids event through the final effluent is considered an unusual/extraordinary discharge. DEQ has no record of this unusual/extraordinary discharge being reported to DEQ either verbally or in writing, as required by Part II, Section H of the Permit.

5. As stated previously, DEQ staff conducted a compliance inspection at the STP on August 21, 2014. Upon arrival and initial inspection, DEQ staff noted that all aeration at the facility had been turned off. No aeration was being provided to either of the activated sludge trains, or to either of the aerobic digesters. Facility staff indicated that all aeration to the STP had been turned off since August 1, 2014, a period of three weeks. Contents of the activated sludge trains were septic. Facility staff indicated that, due to the STP receiving a strong influent flow, significant foaming had been occurring within the aeration basins. All three clarifiers were dark in color and also appeared to be septic. Facility staff indicated that significant sludge bulking had been occurring during clarification when aeration was provided to the activated sludge aeration basins. Poor disinfection was occurring, due to the considerable amount of organic matter being carried over to the chlorine contact basins from the clarifiers. Aeration equipment was turned back on, late in the afternoon of August 21, 2014.
6. DEQ has no record of the taking out of service of aeration units as noted in Observation 5 above, with the resultant reduction in treatment processes and efficiencies, being reported to DEQ either verbally or in writing, as required by Part II, Section H of the Permit.
7. Part II, Section Q of the Permit states that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance.
8. DEQ staff conducted a follow-up inspection at the STP on August 28, 2014. During the inspection, DEQ staff noted that the effluent pump supplying effluent to both the chlorine and sulfur dioxide feeders was turned off. No chlorination (disinfection) and dechlorination were being provided prior to discharge of the final effluent. Facility staff indicated that the effluent pump had been turned off at 7:30 a.m. that morning, due to the large amount of organic matter in the effluent. The pump was turned on, with chlorine and sulfur dioxide again being fed to the final effluent at 11:30 a.m. that morning.
9. SWRO issued NOV No. W2014-09-S-0001 on September 17, 2014. Town personnel met with DEQ staff on September 30, 2014 and responded in writing to the NOV by letter received by DEQ on October 8, 2014. The Town indicated that telescopic valves had been inspected and cleaned, that additional control testing had already begun, that reporting requirements within the Permit had been reviewed and would be adhered to, and that process units would not be taken off-line without immediate notification of DEQ. Weekly reports of operations and control test results have been submitted. The letter also refers to a Virginia Clean Water Revolving Loan Fund (VCWRLF) project for installation of a mechanically cleaned grit chamber and chemical feed equipment. A schedule for that project is incorporated as Appendix B of the Order.
10. Independence submitted an incomplete DMR for February, 2014 (failed to report flow values), but submitted an amended DMR in April, 2014. An incomplete DMR was submitted for September, 2014 (failed to report total chlorine values). An amended

DMR, reporting the total chlorine data, was received November 12, 2014. Part II, Section C of the Permit requires that the results of the monitoring required by the Permit be submitted no later than the 10<sup>th</sup> of the month after monitoring takes place.

11. Independence's operating logs indicate that it discharged treated and partially treated wastewater from the Plant every day from February 1, 2014 through August 31, 2014.
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. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
15. The Department has issued no permits or certificates to Independence for the discharge from the STP other than VPDES Permit No. VA0064424.
16. Peach Bottom Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
17. Based on results of the August 21, 2014 and August 28, 2014 inspections, the September 30, 2014 meeting, and documentation received October 8, 2014, the Board concludes that Independence has violated the Permit, Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging treated and partially 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(6), C(8) and C(10) above.
18. In order for Independence to complete its return to compliance, DEQ staff and representatives of Independence have agreed to the Schedules of Compliance, which are incorporated as Appendices A and B 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 Town of Independence, and the Town of Independence agrees to:

1. Perform the actions described in Appendices A and B of this Order; and
2. Pay a civil charge of \$25,555.00 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 Town of Independence 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, the Town of Independence 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 Independence for good cause shown by Independence, 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 No. W2014-09-S-0001, dated September 17, 2014. 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, Independence admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Independence 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. Independence 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 Independence 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. Independence 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. Independence shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Independence 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.

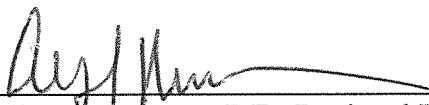
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement 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 Independence. Nevertheless, Independence 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 Independence has completed all of the requirements of the Order;
  - b. Independence 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 Independence.

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

And it is so ORDERED this 22nd day of June, 2015.

  
Allen J. Newman, P.E., Regional Director  
Department of Environmental Quality

The Town of Independence voluntarily agrees to the issuance of this Order.

Date: 4/22/15 By: E. F. Reeres Mayor  
(Person) (Title)  
Town of Independence

Commonwealth of Virginia  
City/County of Grayson

The foregoing document was signed and acknowledged before me this 22<sup>nd</sup> day of

April, 2015, by E. F. Reeres who is

Mayor of the Town of Independence, on behalf of the Town.

Kimberly Jo Farmer  
Notary Public

7245213  
Registration No.

My commission expires: 09/30/2017

Notary seal:



## APPENDIX A SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law, the Regulation and the Permit, the Town of Independence agrees to implement the following actions by the dates noted below:

1. BOD<sub>5</sub>, Total Suspended Solids and Ammonia, as N (Jun-Dec) shall be sampled and tested on Monday, Wednesday and Friday.....beginning April 1, 2015
2. Submit to DEQ for review copies of the following pretreatment program items: a sewer use ordinance, the results of a new industrial user survey, a template industrial user permit, any current industrial user permits issued by the Town and copies of any industrial user inspection reports completed since January 1, 2013.....by June 1, 2015
3. Submit copies of any changes or revisions of standard operating procedures developed and instituted and any operator training that occurred as a result of the incidents noted in this Consent Order, to DEQ for review\* .....by June 30, 2016
4. Unless otherwise specified in this Order, the Town of Independence shall submit all requirements of Appendix A of this Order to:

Ruby Scott  
Compliance Auditor  
VA DEQ – Southwest Regional Office  
355-A Deadmore Street  
Abingdon, Virginia 24210  
Phone: (276) 676-4882  
Fax: (276) 676-4899  
[ruby.scott@deq.virginia.gov](mailto:ruby.scott@deq.virginia.gov)

- \* Submittal of a revised O&M Manual (due to the addition of or changes to treatment units and process controls) for review and approval is required by the Permit and by the VCWRLF program at 95% completion of the VCWRLF project.

## APPENDIX B SCHEDULE OF COMPLIANCE

In order to comply with the provisions of the State Water Control Law, the Regulation and the Permit, the Town of Independence agrees to implement the following actions, as they relate to the Virginia Clean Water Revolving Loan Fund project for installation of a mechanically cleaned grit chamber and chemical feed equipment, by the dates noted below:

1. Submit final design plans and specifications to DEQ.....August 30, 2015
2. Obtain DEQ Approval of Plans and Specifications\*\* .....September 30, 2015
3. Award Contract.....November 15, 2015
4. Issue Notice to Proceed and Begin Construction.....December 30, 2015
5. Achieve Substantial Completion.....June 30, 2016
6. Achieve final completion, obtain CTO and place new treatment units in service..July 30, 2016
7. Notify DEQ in writing within ten days of completion of any item noted in Items 1 through 6 above.
8. Submit quarterly progress reports to the SWRO; the first report, for the reporting period April 1, 2015 through June 30, 2015, shall be due on July 10, 2015; subsequent quarterly reports shall be submitted in the same manner until the project is completed.
9. Unless otherwise specified in this Order, the Town of Independence shall submit all requirements of Appendix B of this Order to:

Ruby Scott  
Compliance Auditor  
VA DEQ – Southwest Regional Office  
355-A Deadmore Street  
Abingdon, Virginia 24210  
Phone: (276) 676-4882  
Fax: (276) 6764899  
[ruby.scott@deq.virginia.gov](mailto:ruby.scott@deq.virginia.gov)

\*\* Upon approval by DEQ, said documents/schedules shall become an enforceable part of this Consent Order, as stated in Item 12 of Section E, Administrative Provisions, above.