



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Andrew R. Wheeler
Secretary of Natural and Historic Resources

Michael S. Rolband PE, PWD, PWS Emeritus
Director
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Craig R. Nicol
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Town of Cape Charles
FOR
The Town of Cape Charles Wastewater Treatment Plant
VPDES Permit No. VA0021288**

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 Cape Charles, regarding the Town of Cape Charles 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” means the Town of Cape Charles Wastewater Treatment Plant located at 500 Bayshore Road in Cape Charles, VA 23310, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town.
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. “O&M” means operations and maintenance.
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. VA0021288, which was issued under the State Water Control Law and the Regulation to the Town on December 1, 2019 and expires on November 30, 2024.
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. "Town" means the Town of Cape Charles, a political subdivision of the Commonwealth of Virginia. The Town is a "person" within the meaning of 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.
25. "WWTP" means Waste Water Treatment Plant.

SECTION C: Findings of Fact and Conclusions of Law

1. The Town owns and operates the Facility. The Permit allows the Town to discharge treated sewage and other municipal wastes from the Facility, to Cape Charles Harbor and the Chesapeake Bay, in strict compliance with the terms and conditions outlined in the Permit.

2. Cape Charles Harbor is listed in DEQ's 305(b) report as impaired due to high levels of *Enterococci*, for the presence of PCB in fish tissue, and for deficiencies in dissolved oxygen and aquatic plants (macrophytes). The sources of *Enterococci* and PCB impairments are unknown, the sources of the dissolved oxygen and aquatic plant impairments include municipal point-source discharges and sanitary sewer overflows.
3. Va. Code § 62.1-44.5, 9VAC25-21-50(A), and Part II.F of the Permit prohibit discharge into state waters sewage, industrial wastes, or any noxious or deleterious substances except as authorized by a permit.
4. On August 13, 2021, DEQ received a report from the Town that the holding tank for backwash water from the Town potable water plant was overflowing onto the ground. On August 15, 2021, DEQ received a citizen report that the holding tank was (again) overflowing onto the ground.
5. On August 17, 2021 by letter, the Town provided a response to the two overflows from the holding tank. In the response, the Town estimated that each overflow released 1,000 gallons of partially treated potable water from the holding tank. The response provided that an equipment failure had allowed the holding tank to remain at capacity when additional water had been pumped to the holding tank. The Town provided that a visual observation of the holding tank capacity was now required prior to any water being pumped to it.
6. On August 18, 2021, TRO issued Warning Letter No. W2021-08-T-1011 regarding the two overflows from the holding tank.
7. Part I.A of the Permit provides that the Town shall limit and monitor discharges from Outfall 001.
8. In submitting the June, July, and August 2021 DMRs, as required by the Permit, the Town indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for Total Suspended Solids ("TSS") for the June 2021 reporting period, and for Ammonia for the July and August 2021 reporting periods.
9. On September 7, 2021, TRO issued Warning Letter No. W2021-09-T-1019 for the June 2021 TSS exceedance.
10. On September 15, 2021 by email, the Town responded to the September 7, 2021 Warning Letter. In the response, the Town provided that the TSS reported as 204 milligrams per liter was a typographical error when the actual TSS number was 20.4 milligrams per liter, and the actual TSS number was entered into DEQ records on September 8, 2021.
11. Part II.C of the Permit requires that the permittee shall submit the results of required monitoring not later than the 10th of the month following the reporting period.

12. On July 15, 2021, the Town submitted the first half 2021 DMR for internal Outfall 101. The DMR was due on July 10, 2021.
13. On October 22, 2021, TRO issued Warning Letter No. W2021-09-T-1044 for the July and August 2021 Ammonia exceedances and the internal Outfall 101 first half 2021 DMR that was received late on July 15, 2021.
14. On October 22, 2021 by letter, the Town responded to the October 22, 2021 Warning Letter. In the response, the Town provided that early alert process control tests for ammonia were being researched in order to adjust treatment accordingly for high ammonia. The Town also provided that wall calendar and telephone alerts had been added as reminders to avoid late DMR reporting.
15. 9VAC25-790-420(B) requires that an alarm system be provided to monitor pump station operations that meets the appropriate reliability requirements for Class I reliability.
16. 9VAC25-790-490(F) requires that an audiovisual alarm system be provided for all treatment works to monitor the condition of equipment whose failure could result in a bypass or a violation of effluent limitations or could result in damage to vital components.
17. Part I. B.5 of the Permit requires the permitted treatment works to meet reliability Class I.
18. Part I.B.6 of the Permit requires that a current O&M manual be maintained for the treatment works that is in accordance with 9VAC25-31 and 9VAC 25-790, and that approvable daily, weekly and monthly logs shall be developed and maintained documenting the O&M, operational observations and process control testing of the WWTP, a site specific O&M log sheet shall be developed by the permitted within 180 days of the effective date of the permit. The log shall include, but not limited to, treatment process observations, operational changes, and results of regular process control testing, equipment calibration information, and made available to DEQ upon request.
19. Part I.B.9.a of the Permit states how monthly averages shall be calculated.
20. Part I. B. 9.b. of the Permit states how maximum weekly averages shall be calculated.
21. Part II.A.2 of the Permit requires that monitoring as in sample preservation requirements shall be conducted according to procedures approved under 40CFR136. 40CFR136.3 Table II lists sample preservation temperature requirements for carbonaceous oxygen demand ("CBOD5"), TSS, ammonia, total nitrogen, and total phosphorus.
22. Part II.A.3 of the Permit requires that the permittee periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of the measurements.

23. Part II.A.4 of the Permit requires that all analysis for compliance with effluent limitations shall be in accordance with 1VAC30-45 or 1VAC30-46.
24. Part II.I of the Permit requires that the permittee report any non-compliance which may adversely affect state water or may endanger public health.
25. Part II.Q of the Permit requires that the permittee operate and maintain all facilities and systems of treatment and control.
26. During a Facility inspection on October 19, 2021, DEQ staff documented the following compliance deficiencies:
 - a. The Facility ultraviolet (“UV”) disinfection system control box computer screen was reporting error messages. The operational characteristics of the UV system could not be observed;
 - b. The Facility automatic effluent sampler thermometer was observed with an expiration date of August 12, 2020;
 - c. The temperature reading for the Facility automatic effluent sampler was 9 degrees Centigrade. Equal to or below 6 degree Centigrade is required (40 CFR 136.3) at the sampler for preservation of samples for carbonaceous biochemical oxygen demand (“CBOD5”), TSS, ammonia, total nitrogen, and total phosphorous;
 - d. The Facility alarm system was not functioning at the time of the inspection. According to the Facility operator, the alarm system had not been functioning since approximately August 2021;
 - e. Two Town sewage pump stations, Figg Street and Washington Street, that are part of the Facility treatment works did not have functioning alarms;
 - f. One Town sewage pump station, Mason Avenue, that is part of the Facility treatment works did not have an installed or operating test mode.
 - g. The Facility O&M manual was not provided for review.
 - h. All required O&M logs were incomplete for July, August, and September 2021, including logbook missing pages, records for dates, headworks, chemical, alarm system, belt press, and the UV system;
 - i. Process control data including influent testing and additional process analysis required as part of the O&M manual were not provided for review. According to the operator, the influent testing and additional process analysis had not been conducted per the sampling schedule;

- j. The Facility dissolved oxygen (“DO”) meter could not be calibrated on the date of the inspections;
 - k. DMRs for July, August and September 2021 for Outfall 01 had several reporting errors:
 - i. July 2021
 1. TSS loading maximum, TSS concentration average, and TSS maximum were reported incorrectly;
 2. CBOD loading average and CBOD maximum were reported incorrectly.
 - ii. August 2021
 1. Average flow was reported incorrectly;
 2. TSS loading average and TSS loading maximum were reported incorrectly;
 3. TSS concentration average and TSS concentration maximum were reported incorrectly;
 4. CBOD loading average and loading maximum were reported incorrectly;
 5. CBOD concentration average and concentration maximum were reported incorrectly.
 - iii. September 2021
 1. TSS loading average and TSS maximum were reported incorrectly;
 2. TSS concentration average and concentration maximum were reported incorrectly;
 3. CBOD loading average and CBOD maximum were reported incorrectly;
 4. CBOD concentration average and concentration maximum were reported incorrectly.
 1. The TSS analysis performed in July and August 2021 and iron analysis performed in July, August, and September 2021 were performed in the Facility laboratory. The Town Facility laboratory is not an accredited environmental laboratory.
27. On November 15, 2021, TRO issued NOV No. W2021-11-T-0001 for the deficiencies observed during the October 19, 2021 DEQ inspection of the Facility.
28. On December 15, 2021 by letter, the Town responded to the NOV. In the response, the Town provided that corrective actions have been taken for each deficiency listed in the NOV.
29. The Town’s operating logs indicate that it discharged treated wastewater from the Facility every day from June 1, 2021 through December 15, 2021.

30. 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.”
31. 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.
32. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
33. The Department has issued no permits or certificates to the Town other than VPDES Permit No. VA0021288.
34. Cape Charles Harbor is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
35. Based on the results of the October 19, 2021 inspection and documentation provided to DEQ by the Town, the Board concludes that the Town has violated Va. Code § 62.1-44.5, 9VAC25-31-50(A), 9VAC25-790-420(B), 9VAC25-790-490(F), and conditions Part I.A, Part I.B.5, Part I.B.6, Part I.B.9.a, Part I.B.9.b, Part II.A.2, Part II.A.3, Part II.A.4, Part II.C, Part II.F., Part II.I, and Part II.Q of the Permit, by discharging treated sewage and municipal wastes from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) and C(27), above.
36. In order for the Town to return to compliance, DEQ staff and representatives of the Town 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 the Town, and the Town agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$22,375.00 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 shall include its Federal Employer Identification Number (FEIN) 546001186 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 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 the Town for good cause shown by the Town, 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 WL No. W2021-08-T-1011 issued August 18, 2021, WL No. W2021-09-T-1019, issued September 7, 2021, WL No. W2021-09-T-1044 issued October 22, 2021, and NOV No. W2021-11-T-0001, issued November 15, 2021. 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 Town admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Town 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. The Town 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 Town 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 Town 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 Town shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town 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 the Town. Nevertheless, the Town 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 Town has completed all of the requirements of the Order;
 - b. The Town 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 Town.

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

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

Craig R. Nicol, Regional Director
Department of Environmental Quality

The Town of Cape Charles voluntarily agrees to the issuance of this Order.

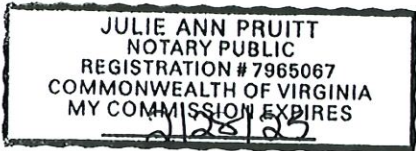
Date: 2/01/22 By: John Hozay, TOWN MANAGER
(Person) (Title)

The Town of Cape Charles

Commonwealth of Virginia
Town/County of Cape Charles

The foregoing document was signed and acknowledged before me this 1st day of Feb, 2022, by John Hozay who is

Town Manager of the Town of Cape Charles, on behalf of the Town.



Julie Pruitt
Notary Public
7965067
Registration No.

My commission expires: 2/28/25

Notary seal:

APPENDIX A SCHEDULE OF COMPLIANCE

1. The Town shall submit to DEQ a corrective action plan (“CAP”) and schedule for review and approval by April 1, 2022. The CAP shall include:
 - a. A plan to achieve and maintain consistent compliance with Permit effluent limits;
 - b. A solution to the improper DMR reporting;
 - c. A plan to update and maintain the O&M manual on a regular and consistent basis.
2. The Town shall complete corrective action in accordance with the CAP as expeditiously as possible, but no later than October 1, 2022.
3. Unless otherwise specified in this Order, the Town shall submit all requirements of Appendix A of this Order to:

Craig R. Nicol
Regional Director
VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, Virginia 23462