



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 FAX (804) 698-4178

www.deq.virginia.gov

Travis A. Voyles
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

Craig R. Nicol
Regional Director

August 19, 2022

Mr. John Hozey
Town Manager
Town of Cape Charles WWTP
2 Plum Street
Cape Charles, Virginia 23310

Delivered electronically: John.Hozey@capecharles.org

NOTICE OF VIOLATION

RE: NOV No. W2022-08-T-0001
Town of Cape Charles WWTP
VPDES Permit or Registration No. VA0021288

Dear Mr. Hozey:

This letter notifies you of information upon which the Department of Environmental Quality (“Department” or “DEQ”) may rely in order to institute an administrative or judicial enforcement action. Based on this information, DEQ has reason to believe that the Town of Cape Charles may be in violation of the State Water Control Law and Regulations at the Cape Charles Wastewater Treatment Plant (WWTP), located at 1270 Bayshore Rd. Cape Charles, Virginia (“Facility”).

This letter addresses conditions at the facility named above, and also cites compliance requirements of the State Water Control Law and Regulations and Permit. Pursuant to Va. Code § 62.1-44.15(8a), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 *et seq.* (APA).

OBSERVATIONS AND LEGAL REQUIREMENTS

Town of Cape Charles WWTP is a wastewater treatment facility subject to 9VAC25-31, the Virginia Pollutant Discharge and Elimination System (VPDES) permit regulation under permit number VA0021288. The permit VA0021288 was issued December 1, 2019 and expires November 30, 2024 (“Permit”).

DEQ staff conducted two onsite inspections at the Facility on August 1, 2022 and August 17, 2022. The following describe the staff’s factual observations and identify the applicable legal requirements.

1. Observations: According to Facility records, a bypass of the Facility sludge press began on June 26, 2022 and continued to date of the initial inspection on August 1, 2022. The bypass was ongoing at the time of the August 17, 2022 inspection. DEQ has not received any information to date that the bypass has stopped. An oral report of the sludge press bypass was provided to DEQ Central Office staff during a separate compliance assistance visit on July 25, 2022. A written report of the bypass was submitted to DEQ on July 28, 2022, 32 days after the bypass began.

Legal Requirement: Permit Part II.I, Reports of Noncompliance: “The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. **An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:**
 - a. **Any unanticipated bypass; and**
 - b. **Any upset which causes a discharge to surface waters.**
2. **A written report shall be submitted within 5 days and shall contain:**
 - a. **A description of the noncompliance and its cause;**
 - b. **The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and**
 - c. **Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.**

The Board may waive the written report on a case-by-case basis for reports of noncompliance under Part II.1. if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. **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 11.1.2.”**
2. Observations: At the time of the August 1, 2022 inspection, in-situ dissolved oxygen (DO) probes installed at the treatment unit all read 0.0 milligrams per liter (mg/L) or reported an error message. Daily DO readings documented in the daily logs at the biological treatment unit were

reviewed from June 26, 2022 to July 31, 2022. All results were below the target minimum DO of 2.0 mg/L, with most reported as 0.0 mg/L or not reported. At the time of the August 17, 2022 inspection DO readings were taken in each of the biological treatment units with values between 0.1 and 0.2 mg/L at each of the four locations read. During both inspections the biological treatment unit was observed to be black and gray in color with thick black foam present.

Legal Requirements: Permit Part I.B.6, CTC, CTO and O&M Manual Requirements states: “The permittee shall maintain a current Operations and Maintenance (O&M) Manual for the treatment works that is in accordance with Virginia Pollutant Discharge Elimination System Regulations, 9VAC25-31 and (for sewage treatment plants) Sewage Collection and Treatment Regulations, 9VAC25-790.

The O&M Manual and subsequent revisions shall include the manual effective date and meet Part II.K.2 and Part II.K.4 Signatory Requirements of the permit. Any changes in the practices and procedures followed by the permittee shall be documented in the O&M Manual within 90 days of the effective date of the changes. The permittee shall operate the treatment works in accordance with the O&M Manual and shall make the O&M manual available to Department personnel for review during facility inspections. Within 30 days of a request by DEQ, the current O&M Manual shall be submitted to the DEQ Regional Office for review and approval.”

Facility Operation and Maintenance (O&M) Manual Chapter 2 states: “The DO target for this stage is 2.0, to get best treatment. Water in the tanks should be uniform in both color (light brown) and in bubbles and foam(entire tank should be bubbly NO dead spots)”

Facility Operation and Maintenance (O&M) Manual Chapter 9-5 states: “When the Belt Filter Press is offline for maintenance or repairs, waste activated sludge (WAS) can be discharged to a tanker truck for off-site treatment or disposal using the quick disconnect at the loading station located adjacent to the Sludge Feed Pumps.”

3. Observations: The ultraviolet (UV) disinfection system control box computer screen was not operational at the time of the August 1, 2022 or August 17, 2022 inspections. According to the operator, no other way exists to interface with the UV system. Due to this malfunction, the operational characteristics of the system could not be observed. A malfunctioning UV system was also reported during inspections conducted in 2018, 2020 and 2021.

Legal Requirement: Permit Part II.Q, Proper Operation and Maintenance states: “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, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.”

4. **Observations:** Daily operator logs documented the presence of foam at the outfall on July 8th, 10th, 20th, 22nd, 24th, and 25th, 2022.

Legal Requirement: Permit Part I.A.3, states: “There shall be no discharge of floating solids or visible foam in other than trace amounts”

5. **Observations:** The plant’s sampler refrigerator was observed with the current temperature reading of 7° C that exceeds the required temperature for monitoring (preservation) of <6° C. Monitoring (preservation) below 6° C is required for the following analysis: carbonaceous biochemical oxygen demand (“CBOD5”), total suspended solids (“TSS”), ammonia, total nitrogen, and total phosphorous. Monitoring (preservation) requirements are specified as part of the individual analysis procedures.

Legal Requirement: Permit Part II.A.2-3, states: “ 2. Monitoring shall be conducted according to procedures approved under Title 40 Code of Federal Regulations Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals that will insure accuracy of measurements”

6. **Observations:** Logs required by the Facility O&M manual were not complete. The monthly log and checklist was reviewed for April 2022 through July 2022:
- a. A check of the operator’s certificates of competency was not completed as scheduled in April.
 - b. A review of laboratory control samples for the pH and DO laboratory parameter was not conducted in June as scheduled.
 - c. A monthly check of all system pump stations was not completed as scheduled in July.

Daily operator logs between June 26, 2022 and July 31, 2022 were reviewed:

- d. Each provided log was incomplete with no logs documenting the required malfunctioning UV system observations. Logs were observed with a significant amount of incomplete information on July 8th, 9th, 11th, 12th, and 13th.
- e. Daily solids wasting observations were not documented on logs observed for June 28th and 29th, July 8th, 9th, 12th, 13th, 18th, 22nd, 26th, 27th, and 28th.
- f. Dissolved oxygen observations were not documented on logs observed for July 9th, 13th, and 18th.
- g. Outfall observations were not documented on logs observed for July 14th and 15th.
- h. Membrane observations were not documented on logs provided for July 10th and 16th.

Legal Requirement: Permit Part I.B.14, Operations & Maintenance (O&M), Operational Observations and Process Control Testing Log states: “Approvable daily, weekly and monthly logs shall be developed and maintained documenting the O&M, operational observations and process control testing of the wastewater treatment plant. A site specific O&M log sheet shall be developed by the permittee, within 180 days of the effective date of the permit. The log shall include, but not be limited to: treatment process observations, operational changes, and results of regular process control testing, and equipment calibration information. These logs shall be made available to DEQ upon request.”

7. Observations: A plan for the management and/or disposal of waste solids and residues, a Sludge Management Plan, was requested for review and was not provided.

Legal Requirements: Permit Part I.B.6.f, CTC, CTO and O&M Manual Requirements requires a plan for the management and/or disposal of waste solids and residues.

Part I.B.11, Sludge Use and Disposal/Sludge Management Plan states: “The permittee shall conduct all sewage sludge use or disposal activities in accordance with the Sludge Management Plan (SMP) approved with the issuance of this permit. Any proposed changes in the sewage sludge use or disposal practices or procedures followed by the permittee shall be documented and submitted for DEQ and Department of Health approval 90 days prior to the effective date of the changes. Upon approval, the revised SMP becomes an enforceable part of the permit. The permit may be modified or alternatively revoked and reissued to incorporate limitations or conditions necessitated by substantive changes in sewage sludge use or disposal practices.”

8. Observations: The process control and influent testing schedule documented in Appendix C of the Facility’s O&M manual was not completed. Influent total phosphorous, orthophosphate, total Kjeldahl nitrogen (TKN), and ammonia nitrogen were not completed in June 2022. The May 2022 influent testing results did not include orthophosphate or ammonia nitrogen. Additional “as needed” testing outlined in the sampling schedule was not completed during this bypass event.

Legal Requirement: Part I.B.6, CTC, CTO and O&M Manual Requirements states: “The permittee shall maintain a current Operations and Maintenance (O&M) Manual for the treatment works that is in accordance with Virginia Pollutant Discharge Elimination System Regulations, 9VAC25-31 and (for sewage treatment plants) Sewage Collection and Treatment Regulations, 9VAC25-790.

The O&M Manual and subsequent revisions shall include the manual effective date and meet Part II.K.2 and Part II.K.4 Signatory Requirements of the permit. Any changes in the practices and procedures followed by the permittee shall be documented in the O&M Manual within 90 days of the effective date of the changes. The permittee shall operate the treatment works in accordance with the O&M Manual and shall make the O&M manual available to Department personnel for review during facility inspections. Within 30 days of a request by DEQ, the current O&M Manual shall be submitted to the DEQ Regional Office for review and approval.”

9. Observations: Discharge monitoring reports (DMR) containing the following relevant data results were submitted to DEQ.

Outfall 001 (Effluent Monitoring)										
Parameter	Observations - DMR Monitoring Period and Relevant Reported Monitoring Results									Legal Req.*
	12/21	01/22	05/22							
Phosphorus, Total average concentration (mg/L)	0.41									0.30
TSS maximum concentration (mg/L)		17.4	16.6							15
TSS maximum quantity (kg/d)			28.1							14

*** The currently effective VPDES permit for this facility contains conditions that enumerate the effluent limitations in this column. Va. Code § 62.1-44.5 prohibits waste discharges or other quality alterations of state waters except as authorized by permit. 9 VAC 25-31-50 provides that “except in compliance with a VPDES permit, or another permit, 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.”**

ENFORCEMENT AUTHORITY

Va. Code § 62.1-44.23 of the State Water Control Law provides for an injunction for any violation of the State Water Control Law, any regulation, order, permit condition, standard, or any certificate requirement or provision. Va. Code §§ 62.1-44.15 and 62.1-44.32 provide for a civil penalty up to \$32,500 per day of each violation of the same. In addition, Va. Code § 62.1-44.15 authorizes the Department to issue orders to any person to comply with the State Water Control Law and regulations, including the imposition of a civil penalty for violations of up to \$100,000. Also, Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the State Water Control Law and regulations, and to impose a civil penalty. Va. Code §§ 62.1-44.32(b) and 62.1-44.32(c) provide for other additional penalties.

FUTURE ACTIONS

DEQ staff wishes to discuss all aspects of their observations with you, including any actions needed to ensure compliance with state law and regulations, any relevant or related measures you plan to take or have taken, and a schedule, as needed, for further activities. In addition, please advise us if you dispute any of the observations recited herein or if there is other information of which DEQ should be aware. In order to avoid adversarial enforcement

proceedings, the Town of Cape Charles may be asked to enter into a Consent Order with the Department to formalize a plan and schedule of corrective action and to settle any outstanding issues regarding this matter, including the assessment of civil charges.

In the event that discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution. Also, if informal discussions do not lead to a satisfactory conclusion, you may request in writing that DEQ take all necessary steps to issue a final decision or fact finding under the APA on whether or not a violation has occurred. For further information on the Process for Early Dispute Resolution, please see Agency Policy Statement No. 8-2005 posted on the Department's website under "Permits & Regulations," and "Enforcement," (https://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\GuidanceDocs\440\GD oc_DEQ_2672_v1.pdf) or ask the DEQ contact listed below.

Please contact **John Brandt** at (757) 518-2010 or John.Brandt@deq.virginia.gov **within 10 days** to discuss this matter and arrange a meeting.

Sincerely,



Julianne N. Laferriere
Water Compliance Manager

cc: TRO File/ECM
Patrick Christman, patrick.christman@capecharles.org