



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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September 29, 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. W2022-09-T-0008
Town of Cape Charles WWTP
VPDES Permit or Registration No. VAN050001

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” or “plant”), located at 1270 Bayshore Rd. Cape Charles, Virginia 23310 (“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 9VAC25-820, the Virginia Pollutant Discharge and Elimination System (“VPDES”) Watershed General Permit VAN05 Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia permit regulation under permit number VAN050001. The general permit VAN05001 was issued January 1, 2022 and expires December 31, 2026 (“Permit”).

DEQ staff conducted an onsite inspection at the Facility on September 8, 2022. The following describe the staff’s factual observations and identify the applicable legal requirements.

1. **Observations:** The WWTP operator reported the collection of 8 hour composite (8-HC) effluent samples was conducted over a timeframe less than 8 hours, typically 6.5 to 7 hours. 8-HC effluent samples for total Kjeldahl Nitrogen (TKN), nitrate (NO₃), nitrite (NO₂), Total Nitrogen (TN), and Total Phosphorus (TP) are required a minimum twice per month. According to DEQ records, the Cape Charles WWTP is a 0.25 MGD facility, or 0.040 – 0.499 MGD as illustrated in the Table below.

Legal Requirement: Permit Part I.E.1, Monitoring Requirements: “Discharges shall be monitored by the permittee during weekdays as specified in the table below unless the department determines that weekday only sampling results in a non-representative load. Weekend monitoring or alternative monthly load calculations to address production schedules or seasonal flows shall be submitted to the department for review and approval on a case-by-case basis. Facilities that exhibit instantaneous discharge flows that vary from the daily average discharge flow by less than 10% may submit a proposal to the department to use an alternative sample type; such proposals shall be reviewed and approved by the department on a case-by-case basis.

Parameter	Sample Type and Collection Frequency				
STP design flow	≥20.0 MGD	1.0 - 19.999 MGD	0.5 - 0.999 MGD	0.040 - 0.499 MGD	< 0.040 MGD
Effluent TN load limit for industrial facilities		≥100,000 lb/yr	50,000 - 99,999 lb/yr	487 - 49,999 lb/yr	< 487 lb/yr
Effluent TP load limit for		≥10,000 lb/yr	5,000 - 9,999 lb/yr	37 - 4,999 lb/yr	< 37 lb/yr

industrial facilities					
Flow	Totalizing, Indicating, and Recording				1/Day, see individual VPDES permit for sample type
Nitrogen Compounds (Total Nitrogen = TKN + NO₂- (as N) + NO₃- (as N))	24 HC 3 Days/Week	24 HC 2 Days/Week*	8 HC 2 Days/Week*	8 HC 2/Month, > 7 days apart	1/Month Grab
Total Phosphorus	24 HC 3 Days/Week	24 HC 2 Days/Week*	8 HC 2 Days/Week*	8 HC 2/Month, > 7 days apart	1/Month Grab
*Two flow composited samples taken in the same calendar week that are then composited by flow into a single weekly composite sample for analysis shall be considered to be in compliance with this requirement.					

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