COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
THE HENRY COUNTY PUBLIC SERVICE AUTHORITY
FOR AN UNPERMITTED DISCHARGE
FROM MANHOLE #52
HOLLY ROAD, PATRIOT CENTER
HENRY COUNTY, VA

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 Henry County Public Service Authority, regarding an unpermitted discharge, for the purpose of resolving certain violations of the State Water Control Law and the applicable 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. "Authority" means the Henry County Public Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* The Authority is a "person" within the meaning of Va. Code §62.1-44.3.

3. "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.

4. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

7. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10

8. "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.

9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

10. "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.

11. "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.

12. "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.

13. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

14. "The Site" means manhole #52, at Holly Road, near Monogram Snack Foods, in the Patriot Center, Henry County, which is a component of the sanitary sewer collection system owned by the Authority.

15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

16. "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.

17. "Va. Code" means the Code of Virginia (1950), as amended.

18. "VAC" means the Virginia Administrative Code.

19. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. The Authority owns and operates a sanitary sewer collection system in Henry County, Virginia. The Site is a component of the sanitary sewer collection system.

2. Beaver Creek and its tributaries are located in the Roanoke/Yadkin River Basin. Beaver Creek and its tributaries are listed in DEQ's 305(b)/303(d) report as impaired for Escherichia coli and benthic-macroinvertebrate bioassessments.

3. On July 10, 2015, a sanitary sewer overflow ("SSO") and a fish kill were identified and reported to the Department by the Authority. Reportedly the Site had overflowed into an unnamed tributary ("UT") of Little Beaver Creek and the wastewater flowed downstream into two (an upper and lower) private storm water ponds. The UT of Little Beaver Creek exits the two private storm water ponds and flows into Little Beaver Creek. Authority staff identified the cause of the SSO as materials originating from an industrial user and cleared the blockage within approximately two hours of identifying the SSO.

4. On that same day, Department staff observed a SSO at the Site. The SSO had flowed across the ground and into the UT of Little Beaver Creek. Lime was applied by the Authority for disinfection and was observed on the ground at the point of origin of the

SSO. The UT of Little Beaver Creek contained wastewater solids and a surface film. White strands of bacteria were observed in the UT of Little Beaver Creek. An odor consistent with SSOs was noted by Department staff in the vicinity of the SSO origin point and downstream in the UT of Little Beaver Creek.

5. Department staff investigated and recorded the effects of the SSO and collected physicochemical measurements (temperature, dissolved oxygen, pH, and specific conductivity) in Little Beaver Creek, the UT of Little Beaver Creek, and the two private storm water ponds. .

6. Department staff observed numerous dead fish floating along the edge of the upper pond and a matte of solid material, red in color was observed along the downwind edge of the pond. A strong odor consistent with dead fish and a SSO was present at the upper pond.

7. A dissolved oxygen measurement of 1.05 mg/L was observed in the upper pond. The minimum Water Quality Standard (WQS) value for dissolved oxygen in a stream in this region is 4.0 mg/L. Large tadpoles were observed frequently swimming to the surface and gulping air. Lack of dissolved oxygen is a known effect of a SSO.

8. Measurements and observations in Little Beaver Creek below the lower pond indicated no environmental impacts. Live benthic macroinvertebrates were observed in Little Beaver Creek immediately below the dam and 100m further downstream live fish were observed. No dead fish were observed in Little Beaver Creek.

9. Physicochemical measurements were measured in the UT of Little Beaver Creek above the point of origin of the SSO with no observed environmental impacts. No live or dead fish were observed.

10. To mitigate impacts of the SSO, the Authority immediately removed by pumping the SSO liquid and contaminated solid materials in the upper pond fore bay and installed additional aerators in the upper pond to increase dissolved oxygen concentrations.

11. Beaver Creek and its tributaries are a surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.

12. The Department has issued no permits or certificates to the Authority that would authorize the discharge of wastewater into state waters.

13. 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."

14. 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.

15. The Department issued NOV No. NOV-15-08-BRRO-003 to the Authority on August 27, 2015 for the violations listed in paragraphs (C3) through (C4), above.

16. The Authority responded to the NOV by contacting the Department and providing documentation regarding the nature and cause of the SSO and the corrective actions completed by the Authority to eliminate the SSO and the remediation efforts completed by the Authority.

17. On November 6, 2015, Department staff met with representatives of the Authority to discuss the violations.

18. Based on the results of the July 10, 2015 inspection, the Board concludes that the Authority has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging untreated wastewater from the Site, as described in paragraphs C(3) through (C4), above.

19. The Authority has submitted documentation that verifies that the violations as described in paragraphs C(3) through C(4), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Authority, and the Authority agrees to:

1. Pay a civil charge of **$4,550** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

2. Reimburse DEQ **$1,990.28** for DEQ fish kill investigative costs within 30 days of the effective date of the 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 Authority shall include its Federal Employer Identification Number (FEIN) 54-0799867 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 Authority 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 Authority for good cause shown by the Authority, 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, the Authority admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. The Authority 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 Authority 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 Authority 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 Authority 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 Authority shall demonstrate that such circumstances were beyond its control and not due to a lack of

good faith or diligence on its part. The Authority 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 Authority. Nevertheless, the Authority 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 Authority has completed all of the requirements of the Order;

b. The Authority 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 Authority.

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

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 Authority voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 25th day of March, 2016.

Robert J. Weld, Regional Director
Department of Environmental Quality

The Henry County Public Service Authority voluntarily agrees to the issuance of this Order.

Date: 2/2/16 By: _____, General Manager
Tim Hall
Henry County Public Service Authority

Commonwealth of Virginia
~~City~~/County of Henry

The foregoing document was signed and acknowledged before me this 2nd day of February, 2016, by Tim Hall who is General Manager of the Henry County Public Service Authority, on behalf of the Authority.

Jennifer N. Gregory
Notary Public

241558
Registration No.

My commission expires: 12-31-2016

Notary seal:

JENNIFER N. GREGORY
Notary Public
Commonwealth of Virginia
Reg. #241558
My Commission Expes. 12-31-2016