COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

5636 Southern Boulevard
Virginia Beach, VA 23462
www.deq.state.va.us

Robert G. Burnley
Director

Francis L. Daniel
Tidewater Regional Director
(757) 518-2000

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT
WITH
A/H OLDE TOWNE MARKETPLACE, L.L.C.

SECTION A: Purpose

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and A/H Olde Towne Marketplace, L.L.C., for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in 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 Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Old Towne" means A/H Old Towne Marketplace, L.L.C., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Regulation" means 9 VAC 25-31-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
8. "Permit" means VPDES Permit No. VA0090875.

SECTION C: Findings of Fact and Conclusions of Law

1. Olde Towne owns and operates a package sewage treatment plant that serves the Oak Hall Shopping Center, which is located on U.S. Highway 13 at the intersection with State Route 175 in Accomack County, Virginia. The sewage treatment plant discharges treated wastewater to an unnamed tributary to Tunnels Mill Branch, which is a tributary of Bulbegger Creek. The sewage treatment plant is the subject of the Permit which was issued on November 28, 2001 and expires on November 28, 2006.
2. Section 62.1-44.5 of the Code, §9 VAC 25-31-50 of the Regulations and Part III.L of the Permit authorize discharges from the sewage treatment plant, provided that Olde Towne comply with all conditions of the Permit.
3. Part I.A of the Permit specifies discharge effluent limitations for total suspended solids, pH, fecal coliform, kjeldahl nitrogen, dissolved oxygen, chlorine and carbonaceous biochemical oxygen demand (BOD). During the period January 2003 through November 2003, Olde Towne violated the total suspended solids effluent limitation in March, April, July, August, September, October and November, the fecal coliform limit in February, March, April, June, July, August, October and November, the dissolved oxygen limit in February, March, April, May, June, July, August, September and October, the total kjeldahl nitrogen limit in July, August, September, October and November, and the carbonaceous BOD limit in August and November. Old Towne has taken the following corrective actions to address the referenced violations: replaced the ultraviolet disinfection unit, obtained spare modules, relocated the sand filter and the ultraviolet unit above grade, and installed a post aeration unit.
4. Recent inspections of the sewage treatment plant indicate that toxic constituents in the plant's influent may be the cause of some of the referenced violations. Old Towne is undertaking a study of the plant's influent, as well as inquiring into the waste disposal practices of the plant's users, in order to identify potential sources of toxicity.
5. Part I.C.4 of the Permit required Olde Towne to submit an operations and maintenance manual by October 29, 2002 and to operate the facility in accordance with the operations and maintenance manual. The operations and maintenance manual was submitted on October 22, 2003.
6. The majority of the violations described above are cited in Notice of Violation No. W2003-09-T-0002, issued to Olde Towne on September 16, 2003 , Notice of Violation No.W2003-10-T-0001, issued on October 16, 2003, and Notice of Violation No. W2003-11-T-0001, issued on December 9, 2003.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Olde Towne, and Olde Towne agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Olde Towne, and Olde Towne voluntarily agrees, to pay a civil charge of $8,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include Olde Towne's Federal Identification Number and shall reference that it is being made as a requirement

of this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Olde Towne, for good cause shown by Olde Towne, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above cited Notices of Violation. 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 sewage treatment plant as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Olde Towne admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Olde Towne 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. Olde Towne declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, 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 enforce this Order.
6. Failure by Olde Towne 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. Olde Towne 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 occurrence. Olde Towne shall show that such circumstances were beyond its control and not due to a lack of

good faith or diligence on its part. Olde Towne shall notify the DEQ Regional Director in writing 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 within 48 hours of learning of any condition above, which the Old Towne intends 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, their 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 Olde Towne. Notwithstanding the foregoing, Olde Towne agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Olde Towne. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Olde Towne from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Olde Towne voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of March 24, 2004.

Francis L. Daniel

Francis L. Daniel, Tidewater Regional Director for
Robert G. Burnley, Director
Department of Environmental Quality

Olde Towne voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia
City/County of Va Beach

The foregoing document was signed and acknowledged before me this 20th day of January, 2004, by Anthony Nero, who is Manager of Olde Towne, on behalf of the company.

Anthony Nero

Manager

Gina O Edwards
Notary Public

My commission expires: 12/31/06.

APPENDIX A
A/H OLDE TOWNE MARKETPLACE, L.L.C..

Olde Towne shall:

1. Mail all submittals and reports required by this Appendix A to:
   Francis L. Daniel, Regional Director
   DEQ, Tidewater Regional Office
   5636 Southern Blvd.
   Virginia Beach, VA 23462
2. By April 1, 2004, comply with all Permit effluent limits and in the interim operate the sewage treatment plant in a workmanlike manner in order to ensure that it produces the best quality effluent of which it is capable.
3. By April 1, 2004 submit for review and approval a complete report on its ongoing evaluation of possible toxicity sources together with a description of its efforts to eliminate those sources and the procedures it will institute to ensure that those sources remain eliminated. Upon their approval, implementation of the procedures shall become a requirement of and enforceable under the terms of this Order.