COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BEDFORD REGIONAL WATER AUTHORITY
FOR THE
MONETA REGIONAL WASTEWATER TREATMENT PLANT
VPDES Permit No. VA0091669

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 Bedford Regional Water Authority, regarding the Moneta Regional 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. "The Authority" means the Bedford Regional Water 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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

4. "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.

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. "DMR" means Discharge Monitoring Report.

10. "Facility" or "Plant" means the Moneta Regional Wastewater Treatment Plant located at 1622 White House Road, Moneta, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of Bedford County, Virginia.

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

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. 0091669, which was issued under the State Water Control Law and the Regulation to the Authority on June 17, 2015 and which expires on June 16, 2020.

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

20. "VAC" means the Virginia Administrative Code.

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

22. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The Authority owns and operates the Facility. The Permit allows the Authority to discharge treated sewage and other municipal wastes from the Facility, to Hunting Creek, in strict compliance with the terms and conditions of the Permit.

2. Hunting Creek is located in the Roanoke River Basin. Hunting Creek is listed in DEQ's 305(b)/303(d) Report as impaired for Escherichia coli.

3. The Authority's VPDES permit that was issued on June 17, 2010 and that expired on June 16, 2015 required the Authority to monitor for zinc and develop a plan to achieve compliance with the zinc effluent limit by July 1, 2014.

4. The Authority began sampling for zinc in 2010 and submitting quarterly progress reports, as required in the Permit. This sampling was conducted so that the Authority could ascertain the level of zinc in the Facility's effluent and begin developing a plan of action to achieve compliance with the Permit limits.

5. Beginning in September 2011, the Authority began actively working to achieve compliance with the zinc limit by initiating a pilot program of increasing the pH at the Facility, hiring a consultant to perform a study to demonstrate the possibility of changing the zinc limit, and continuing sampling and analysis to determine the various sources of zinc contributing to the influent at the Facility. Despite these efforts, the Authority failed to comply with the zinc effluent limits once they became effective in July 2014.

6. In submitting its DMRs, as required by the Permit, the Authority has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for zinc, for the months of July through December 2014 and the months of January through December 2015. The DMRs also indicated violations of Parameter 003, BOD5 and Parameter 353, Ammonia for November 2014.

7. The Department issued Warning Letters and a Notice of Violation for the effluent limit exceedances as follows: WL No. W2014-09-W-1002, issued September 10, 2014; WL No. W2014-10-W-1004, issued October 7, 2014; WL No. W2014-12-W-1008, issued December 10, 2014; WL No. W2015-01-W-1009, issued January 12, 2015; and NOV No. 2015-02-W-0002, issued February 9, 2015.

8. The Authority responded to the Warning Letters and Notice of Violation by explaining actions taken at the Facility to meet the effluent limit for zinc and the subsequent operational issues experienced as a result of the pH adjustment process using lime to remove the zinc from the wastewater.

9. 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."

10. 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.

11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

12. The Department has issued no permits or certificates to the Authority other than VPDES Permit No. VA0091669.

13. The Authority's operating logs indicate that it discharged treated wastewater from the Plant every day from July 1, 2014 through December 31, 2015.

14. Hunting Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

15. Based on the DMRs submitted by the Authority, the Board concludes that the Authority has violated the Permit, the Regulation and Va. Code § 62.1-44.5 and 9 VAC 25-31-50,

by discharging treated sewage and municipal wastes from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraph C6, above.

16. On February 27, 2015, Department staff met with representatives of the Authority to discuss the violations and the ongoing efforts by the Authority to achieve compliance with the Permit.

17. In May 2015, the Authority began operating the plant on an F/M ratio to lower solids at the Facility and in December 2015 began using an additional flocculant to remove more solids from the Facility.

18. In order for the Authority to return to compliance, DEQ staff and representatives of the Authority 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 Authority, and the Authority agrees to:

1. Perform the actions described in Appendices A and B of this Order, and

2. Pay a civil charge of **$4,813** 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 Authority shall include its Federal Employer Identification Number (FEIN) 46-1592994 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 8th day of April, 2016.

Robert J. Weld, Regional Director
Department of Environmental Quality

Bedford Regional Water Authority voluntarily agrees to the issuance of this Order.

Date: 2/10/16 By: _____, Executive Director
Brian Key
Bedford Regional Water Authority

Commonwealth of Virginia
City/County of Bedford

The foregoing document was signed and acknowledged before me this 10 day of February, 2016, by Brian Key who is the Executive Director of the Bedford Regional Water Authority, on behalf of the Authority.

Notary Public

7511819
Registration No.

My commission expires: 6/30/2020

Notary seal:

MEGAN E. AUBREY
NOTARY PUBLIC
REG # 7511819
MY COMMISSION EXPIRES 6/30/20
COMMONWEALTH OF VIRGINIA

APPENDIX A
SCHEDULE OF COMPLIANCE

The Authority shall:

1. By **June 1, 2016**, complete a preliminary engineering evaluation of the Facility designed to identify the interim and long term corrective actions needed to ensure the Facility consistently meets the Permit's effluent limits for Total Recoverable Zinc.

2. Submit the results of the above referenced evaluation, together with a schedule for implementation of evaluation recommendations, to the Department for its review and approval no later than **June 22, 2016**. Upon approval by the Department, the evaluation recommendations and schedule shall become a part of this Order.

3. No later than **August 1, 2016**, submit to the Department documentation of a capital and operational budget with sufficient funding to implement the approved interim and long term corrective actions within the timeframe of the approved schedule.

4. No later than **June 30, 2018**, achieve consistent compliance with the Permit's effluent limits for Total Recoverable Zinc.

5. Unless otherwise specified in this Order, the Authority shall submit all requirements of Appendix A of this Order to:

Jerry Ford, Jr.
VA DEQ - Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019
Phone: (540) 562-6817
e-mail: Jerry.Ford@deq.virginia.gov

APPENDIX B
INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

From the effective date of this Order until completion of the corrective action requirements contained in Appendix A, but in no event later than **June 30, 2018**, the Authority shall monitor and limit the discharge from Outfall No. 001 of the Moneta Regional Wastewater Treatment Plant in accordance with VPDES Permit Number VA0091669, except as specified below. These interim limits shall retroactively apply, if applicable, as of the first day of the month in which this Order becomes effective.

These requirements shall be construed in light of the Regulation.

Parameter Description	**Parameter Limits**					**Monitoring Requirements**	
	Quantity Average	**Quantity Maximum**	**Concentration Minimum**	**Concentration Average**	**Concentration Maximum**	**Sample Frequency**	**Sample Type**
Total Recoverable Zinc (µg/l)				160	160	1/Month	8 Hour Composite