COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD

ENFORCEMENT ACTION - ORDER BY CONSENT

ISSUED TO

THE TOWN OF BLACKSTONE
FOR
BLACKSTONE WWTP

VPDES PERMIT No. VA0025194

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15 (8a) and (8d) between the State Water Control Board and the Town of Blackstone, 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 meanings assigned to them below:

1. "Blackstone" or "Town" means the Town of Blackstone, a political subdivision of the Commonwealth of Virginia. The Town of Blackstone is a "person" within the meaning of Va. Code § 62.1-44.3.

2. "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.
3. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Lynchburg, Virginia.
4. Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality.
6. "DMR" means Discharge Monitoring Report.
7. "Facility" or "Plant" means the Blackstone WWTP located at Building 2010, Garnett Avenue in Fort Pickett, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the Town of Blackstone and Fort Pickett.
8. "Notice of Violation" or "NOV" means a type of Notice of Violation under Va. Code § 62.1-44.15.
9. "O & M" means Operation and Maintenance.
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. "Permit" means VPDES Permit number VA0025194; which was issued under the State Water Control Law and the Regulation to the Town on November 25, 2008, and which expires on November 24, 2013.
12. "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.

13. "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.
14. "Regulation" means the VPDES Permit Regulation at 9 VAC 25-31-10 *et seq.*
15. "SEP" means Supplemental Environmental Project.
16. State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. "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.
18. "UT" means unnamed tributary.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means the Virginia Pollutant Discharge Elimination System.
22. "WWTP" or "Blackstone WWTP" means the Blackstone Wastewater Treatment Plant, located at Building 2010, Garnett Avenue in Fort Pickett,

Virginia, which treats sewage and other municipal wastes for the residents and businesses of Blackstone and Fort Pickett.

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

SECTION C: Findings of Fact and Conclusions of Law

1. The Town of Blackstone owns and operates the Facility in Fort Pickett, Virginia. The Permit allows the Town to discharge treated sewage and other municipal wastes from the Facility to an unnamed tributary of Hurricane Branch, in strict compliance with the terms and conditions of the Permit.
2. Hurricane Branch is located in the Chowan & Dismal Swamp River Basin. Both the UT and Hurricane Branch are listed in the 2008 Integrated Report (IR), and are classified as 5A (the Water Quality Standard is not attained, and the stream is impaired for one or more designated uses by a pollutant(s) and requires the development of a TMDL). Both are listed for aquatic life impairment (benthic), with the UT first listed in 2008 (TMDL due 2020) and Hurricane Branch listed in 2004 (TMDL due 2016). The source of the impairments is unknown.
3. In submitting its DMRs, as required by the Permit, the Town has indicated that it has violated the reporting requirements of Parts I.A. and II. C. and the discharge prohibition requirements of Part II.F. of the subject Permit.
4. BRRO issued the following Warning Letters and Notices of Violation for the Permit violations: WL W2009-12-L-1007, WL W2010-02-L-1010, WL W2010-03-L-1002, WL W2010-04-L-1005, and NOV W2010-05-L-0003.
5. The Town of Blackstone reported unpermitted discharges to State waters which occurred on November 11 and 13, 2009, from the Town's Forest Drive, Gospel Hill, and Williams Pond sewage pump stations. The Town attributed the overflows to a 7" rainfall event from the remnants of Hurricane Ida.

6. The Town of Blackstone reported unpermitted discharges to State waters which occurred on December 8, 2009, from the Town's Forest Drive and Williams Pond sewage pump stations. The Town attributed the overflows to a 2" rainfall event which occurred across the Town's service area.
7. The Town of Blackstone reported unpermitted discharges to State waters which occurred on December 25 and 26, 2009, from the Town's Forest Drive, Gospel Hill and Williams Pond sewage pump stations. The Town attributed the overflows to a 1 1/2" rainfall event which occurred across the Town's service area.
8. The Town of Blackstone reported unpermitted discharges to State waters which occurred on January 25, 2010, from the Town's Forest Drive, Gospel Hill and Williams Pond sewage pump stations. The Town attributed the overflows to a 1" to 2" rainfall event which occurred across the Town's service area.
9. The Town of Blackstone was cited for late submission of the February 2010 DMR which was due on or before March 10, 2010, and was received by the Department on March 23, 2010.
10. The Town of Blackstone reported unpermitted discharges to State waters which occurred on March 29, 2010, from the Town's Forest Drive, Gospel Hill and Williams Pond sewage pump stations. The Town attributed the overflows to a 3" rainfall event which occurred across the Town's service area.
11. The Town's representatives met with the Department's enforcement staff on June 4, 2010 to discuss the unpermitted discharges and late reporting violations incurred by the Town and corrective action required to return to compliance. Town officials explained that a 2 million dollar line item for Public Works Capital Improvement Projects had remained unfunded for the last three years. With the Town's current debt retirement load, it cannot participate in the Department's Construction Assistance Program (CAP) which requires a 50/50 funding match.

12. The Town's operating logs indicate that it discharged treated wastewater from the WWTP from November 1, 2009 through March 31, 2010.
13. Va. Code § 62.1-44.5 states that: "Except 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. Va. Code § 62.1-44.15(5a) states that a VPDES Permit is a "certificate" under the statue.
16. The Department has issued no permits or certificates to the Town other than VPDES Permit No. VA0025194.
17. The unnamed tributary, Hurricane Branch, and the Chowan River are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.
18. Based on the overflow reports and late DMR submitted for the Blackstone WWTP, the Board concludes that the Town of Blackstone has violated VPDES Permit No. VA0025194, Va. Code § 62.1-44.5, and 9 VAC 25-31-50 by discharging untreated sewage from the sanitary sewer collection system, while concurrently failing to comply with the conditions of the Permit, as summarized in paragraphs C.3. – C.10., above.
19. In order for the Town to return to compliance, Department staff and representatives of the Town 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, and upon consideration of Va. Code § 10.1-1186.2, the Board orders the Town of Blackstone, and the Town agrees:

1. To perform the actions described in Appendix A and B of this Order; and
2. To pay a civil charge of $66,500.00 in settlement of the violations cited in this Order, to be paid as follows:

a. The Town of Blackstone shall pay $16,625.00 of the civil charge within 30 days of the effective date of 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 Town of Blackstone shall include its Federal Employer Identification Number (FEIN) 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).

b. The Town of Blackstone shall satisfy $49,875.00 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.

c. The net project costs of the SEP to the Town of Blackstone shall not be less than the amount set forth in paragraph D.2.b. If it is, the Town of Blackstone shall pay the remaining amount in accordance with paragraph D.2.a. of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the Town of Blackstone will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those

amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

d. By signing this Order the Town of Blackstone certifies that it has not commenced performance of the SEP.

e. The Town of Blackstone acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by the Town of Blackstone to a third party, shall not relieve the Town of its responsibility to complete the SEP as described in this Order.

f. In the event it publicizes the SEP or the SEP results, the Town of Blackstone shall state in a prominent manner that the project is part of a settlement of an enforcement action.

g. The Department has the sole discretion to:

   i. Authorize any alternate, equivalent SEP proposed by the Town; and

   ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

h. Should the Department determine that the Town of Blackstone has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify the Town in writing. Within 30 days of being notified, the Town shall pay the amount specified in paragraph D.2.b., above as provided in paragraph D.2.a., above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Town of Blackstone for good cause shown by the Town, 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 STP; 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 Town of Blackstone admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. The Town of Blackstone 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 Town of Blackstone 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 Town of Blackstone 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 Town of Blackstone 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 other such occurrence. The Town shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town of Blackstone 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 listed above, which the Town 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 the Town of Blackstone. Nevertheless, the Town 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 Town of Blackstone 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

b. the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Town.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve the Town of Blackstone 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 Town of Blackstone and approved by the Department pursuant to this Order are incorporated into this Order. Any noncompliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of the Town of Blackstone 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 Town to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Town.

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 Town of Blackstone voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 4th day of August, 2011.

Robert J. Weld, Regional Director
Blue Ridge Regional Office
Department of Environmental Quality

The Town of Blackstone voluntarily agrees to the issuance of this Order.

Date: 3/24/11 By: Jennifer H Beck, Acting Town Manager
Jennifer H. Beck
Acting Town Manager
Town of Blackstone

Commonwealth of Virginia
County of Nottoway

The foregoing document was signed and acknowledged before me this 24th day

of March, 2011, by Jennifer H. Beck, who is Acting Town

Manager of the Town of Blackstone on behalf of the Town.

Jennifer S. Daniel
Notary Public

7077525
Registration No.

My commission expires: 9-30-2011.

Notary seal: JENNIFER S. DANIEL
Notary Public
Commonwealth of Virginia
7077525
My Commission Expires Sep 30, 2011

APPENDIX A

SCHEDULE OF COMPLIANCE

1. Submit to the Department no later than **December 31, 2011**, for review and approval, a detailed Sanitary Sewer Rehabilitation Corrective Action Plan (SSRCAP) outlining the design and construction of the proposed sanitary sewer collection system rehabilitation and replacement project.

2. Upon approval by the Department, the SSRCAP shall be considered an integral and enforceable part of this Order.

3. The Town of Blackstone shall secure adequate funding to carry out all planning, engineering, and construction activities outlined in the SSRCAP no later than **December 31, 2012.**

4. The Town of Blackstone shall prepare bid documents associated with the planning, engineering, and construction activities outlined in the SSRCAP; publish Request for Proposals (RFPs), conduct bid reviews, and award the selected bid and issue a Notice to Proceed with construction on or before **December 31, 2013.**

5. The Town of Blackstone shall submit to the Department semi-annual Progress Reports as to the status of the SSRCAP on or before **July 10th, 2012; January 10th and July 10th, 2013; January 10th and July 10th, 2014, January 10th and July 10th, 2015; January 10th and July 10th, 2016; and January 10th, 2017** for the preceding six-month period.

6. The Town of Blackstone shall complete corrective action in accordance with the SSRCAP approved by the Department as expeditiously as possible, but in no case later than **December 31, 2016.**

7. Submit all reports and correspondence required by this Order to:

G. Marvin Booth, III

Regional Enforcement Representative

Department of Environmental Quality

7705 Timberlake Rd.

Lynchburg, VA 24502

APPENDIX B

SUPPLEMENTAL ENVIRONMENTAL PROJECT

In accordance with Va. Code § 10.1-1186.2, the Town of Blackstone shall perform the Supplemental Environmental Project (SEP) identified below in the manner specified in this Appendix.

1. The SEP to be performed by the Town of Blackstone is the design and implementation of a Capacity, Management, Operation and Maintenance (CMOM) Plan that identifies ongoing specific activities that the Town will undertake to responsibly and effectively manage, operate, and maintain the Town of Blackstone sanitary sewer system.

2. The Town of Blackstone shall secure the services of a Professional Engineer (P.E.) licensed by the Commonwealth of Virginia to develop a CMOM Plan for the Town. The CMOM Plan shall include a certification statement and bear the Engineer's seal and signature with the submission.

3. The Town of Blackstone shall submit to the Department no later than **October 31, 2011**, for review and approval, a CMOM Plan that, at a minimum, identifies and describes the following:

A. Major goals of the Town's CMOM Plan;

B. Administrative and maintenance positions responsible for implementing the activities in the CMOM Plan, including lines of authority by organizational chart;

C. Resources allocated to each of the various CMOM Plan elements (i.e., O & M budget, number of positions/full-time equivalents (FTEs), equipment where appropriate, etc.);

D. The Town's legal authority and plans to control infiltration and connections from inflow sources within the Town's collection system, as well as ordinances addressing source control (e.g., Oil and Grease);

E. Preventative and corrective maintenance programs for the Town's pumping stations, gravity mains, manholes and force mains and associated air release valves and pressure control valves, including identification of critical replacement parts;

F. Training programs to ensure that all Town personnel are qualified to perform their duties;

G. The Town's engineering design criteria for construction of new facilities;

H. Annual audits and performance evaluations of the Town's CMOM Plan to evaluate any changes and/or deficiencies in the CMOM Plan and steps to respond to them. The performance evaluations shall be submitted to the Department and shall contain the following quantitative performance measures of inspection and maintenance activities:

(i) Linear feet of gravity sewer cleaned;
(ii) Linear feet of gravity sewer line inspected, repaired, or replaced;
(iii) Pumping station equipment inspection, repair and replacement.

4. The Town of Blackstone shall promptly respond to any comments made by the Department concerning the sufficiency of the CMOM Plan and shall correct any Plan deficiencies noted by the Department expeditiously and shall submit a final approvable CMOM Plan to the Department by **December 31, 2011**.

5. The Town of Blackstone shall implement the CMOM Program in no case later than **January 31, 2017** and shall continue to implement the CMOM Program for no less than two years.

6. The Town of Blackstone shall submit progress reports on the SEP on a semi-annual basis, due on **January 10th** and **July 10th** for the proceeding six-month period implementation is ongoing.

7. The Town of Blackstone shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by the Town's Mayor or the Town Council. The Town of Blackstone shall submit the final report and certification to the Department within 30 days of completion of the SEP.

8. If the SEP has not or cannot be completed as described in the Order, the Town of Blackstone shall notify the Department in writing no later than **January 31, 2019**. Such notification shall include:

A. An alternate SEP proposal, or

B. Payment of the amount specified in Paragraph D.2. of the Order.

9. The Town of Blackstone hereby consents to reasonable access by the Department or its staff to property or documents under the Town's control, for verifying progress or completion of the SEP.

10. The Town of Blackstone shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices, and proof of payment within **30 days** of the SEP completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from the Town's Mayor or its Council concerning the projected tax savings, grants or first-year operation cost reduction or other efficiencies.

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