



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTHWEST REGIONAL OFFICE

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David K. Paylor
Director

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

**CITY OF BRISTOL dba BRISTOL VIRGINIA UTILITIES BOARD
BRISTOL VIRGINIA UTILITIES BOARD WATER TREATMENT PLANT
VPDES PERMIT NO. VA0028321**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d), between the State Water Control Board and the City of Bristol dba Bristol Virginia Utilities Board, for the purpose of resolving certain violations of the State Water Control Law and regulations.

SECTION B: Definitions

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

1. "Va. 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 Va. 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 Va. 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. "BVUB" means the City of Bristol dba Bristol Virginia Utilities Board; the City of Bristol is a municipal government, as defined by Va. Code § 15.2-102.
7. "Facility" means the Bristol Virginia Utilities Board water treatment plant located at 22479 Watauga Road, Abingdon, Virginia 24211.

8. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
9. “Permit” means VPDES Permit No. VA0028321, which was issued to the Bristol Virginia Utilities Board on January 15, 1975, most recently reissued on July 30, 2005, and will expire on July 29, 2010.

SECTION C: Findings of Facts and Conclusions of Law

1. The City of Bristol dba Bristol Virginia Utilities Board (“BVUB”) owns and operates a water treatment plant located at 22479 Watauga Road, Abingdon, Virginia. The Facility’s process wastewaters (washwater from backwash of sand filters, and periodic draining of the sedimentation and flocculation basins) flow into either of two settling ponds, with a discharge to Wolf Creek via Outfall 001 authorized by VPDES Permit No. VA0028321.
2. On December 13, 2005, staff from DEQ’s Southwest Regional Office investigated a report of dead fish in Wolf Creek below the BVUB water treatment plant. Dead fish were found in Wolf Creek below the facility’s discharge point. No dead fish were found upstream of the discharge point.
3. During field investigation of the fish kill, chlorine was found in water samples taken from within the kill zone of Wolf Creek. A water sample taken from within the water treatment plant’s Settling Pond No. 2, the pond in use at the time of the investigation, was tested for total residual chlorine (TRC) concentration. This TRC concentration was greater than could be measured by the chlorine meter being used. After dilution to 100:1 by DEQ staff of a collected sample of pond water that had been refrigerated and held for 20 hours, a chlorine concentration of 1.2 ppm total residual chlorine was obtained. A calculated total residual chlorine concentration of 120 ppm (mg/l) was thus determined. The Virginia Water Quality Standard (acute standard) for TRC in Wolf Creek is 19µg/l.
4. DEQ staff met with BVUB water treatment plant staff during investigation of the fish kill. The BVUB had experienced problems with both chlorine leaks and a polymer spill at the water treatment plant. Due to draining of the day use, 500 gallon polymeric aluminum chloride (“PAC”) tank for repair of a valve, an estimated 10 to 15 gallons of PAC had reportedly been spilled on Monday, December 12, 2005. Two sodium hypochlorite leaks had also occurred. Both leaks occurred in a section of feed line between the hypochlorite tanks and the feed pump. The first leak was repaired on Sunday, December 11, 2005. The second leak, discovered after notification by DEQ staff of the fish kill investigation, was repaired later in the day, Tuesday, December 13, 2005. The hypochlorite leaks and the spilled polymer entered into floor drains in the basement pipe gallery and flowed via piping to Settling Pond No. 2. Settling Pond No. 2 discharges to Wolf Creek via Outfall 001. The amount of sodium hypochlorite lost due to the leaks is not known.

5. Va. Code § 62.1-44.5 prohibits waste discharges or other quality alterations of state waters except as authorized by permit.
6. State regulation 9 VAC 25-31-50, the VPDES Permit Regulation, provides that “except in compliance with a VPDES permit, or another permit, 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...”.
7. Special Condition B.2 of VPDES Permit No. VA0028321 states that “Any and all product, materials, industrial wastes, and/or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation and/or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of and/or stored in such a manner so as not to permit a discharge of such product, materials, industrial wastes and/or other wastes to State waters, except as expressly authorized”.
8. VPDES Permit No. VA0028321 does not authorize the discharge of chlorine or PAC.
9. BVUB staff did not notify DEQ of the chlorine or PAC spills, nor did they provide DEQ with either oral or written notification of the discharge of highly chlorinated wastewater from the Facility. BVUB staff have stated that they were not aware of such a discharge prior to meeting with DEQ staff during field investigation of the fish kill.
10. VPDES Permit No. VA0028321 requires oral notification of DEQ within 24 hours of discovery of an unauthorized, unusual or extraordinary discharge, followed by written notification within five days of discovery of the discharge.
11. Wastewater discharges from the BVUB water treatment plant settling ponds’ 001 outfall are authorized by VPDES Permit No. VA0028321. However, Permit Parts II. G (Reports of Unauthorized Discharges), H (Reports of Unusual or Extraordinary Discharges) and I (Reports of Noncompliance) require immediate (within 24 hours) oral notification of DEQ, with followup by written notification within five days of discovery of the discharge.
12. The discharge from Settling Pond No. 2 was stopped when the hypochlorite leak was discovered on December 13, 2005. At that time, BVUB placed Settling Pond No. 1 in service. Correspondence detailing steps that have been taken by the BVUB since the incident was received by DEQ on February 6, 2006. Floor drains were either permanently sealed, or blocked with removable plugs. Additional valves were installed, with daily closure of all valves at the end of the workshift required. New supply lines were installed to the sodium hypochlorite pumps. Daily visual inspection of all chemical supply lines and valves was instituted as a required operating procedure. Also, as each of the three sodium hypochlorite tanks is emptied, sight tubes with tank level indicators are being installed on each tank. Finally, Sedimentation Pond No. 2 had been treated with sodium sulfite (for dechlorination)

and bioassay analysis of pond water had been conducted. As of the March 16, 2006 meeting between the BVUB and DEQ, the BVUB had not resumed discharging from Pond No. 2.

13. From counts taken during field investigation, an estimated total of 5,359 fish were killed within an approximate kill zone of 3.48 miles of Wolf Creek, below the facility's discharge point. Replacement cost of the fish and the cost of staff investigation total \$7,212.93.
14. Virginia Code § 62.1-44.15 (11) (a) states that the Water Control Board may effect a settlement that will cover the cost of investigating the killing of fish and the cost of the fish destroyed.

SECTION D: Agreement and Order

Accordingly the Board, by virtue of the authority granted it pursuant to Va. Code § 62.1-44.15 (8a) and (8d), orders the BVUB, and the BVUB agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders the BVUB, and the BVUB voluntarily agrees to pay the following costs and civil penalty, as describe below, within **30 days** of the effective date of the Order in settlement of the violations cited in this Order:

- A. Pay \$4,391.72 to cover the replacement cost of fish killed, remitting a check payable to the Department of Game and Inland Fisheries for \$4,391.72.
- B. Pay \$2,821.21 to cover the investigation costs of the fish kill, and pay a \$8,400.00 civil penalty, remitting one check payable to the Department of Environmental Quality for the total amount of \$11,221.21.

Both checks should be sent to:

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

Either on a transmittal letter or as a notation on each check or money order, the BVUB shall indicate that the payment is submitted pursuant to this Order and shall include the BVUB's Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the BVUB, for good cause shown by the BVUB, or on its own motion after notice and opportunity to be heard.

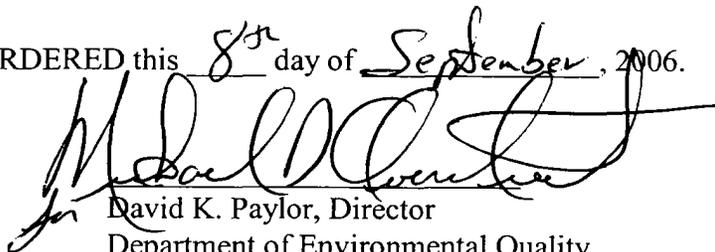
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this 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, the BVUB admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The BVUB 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 BVUB declares it has received fair and due process under the Administrative Process Act, 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 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 the BVUB 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 BVUB 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 act of God, war, strike, or such other occurrence. The BVUB must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The BVUB shall notify the Director of the SWRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of 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 notify by phone the Director of the SWRO within 24 hours of learning of any condition listed above, which the BVUB intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of 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. Any plans, reports, schedules or specifications attached hereto or submitted by the BVUB 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.
- 11. This Order shall become effective upon execution by both the Director or his designee and the BVUB. Notwithstanding the foregoing, the BVUB agrees to be bound by any compliance date which precedes the effective date of this Order.
- 12. 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 the BVUB. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the BVUB from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 13. The undersigned representative of the BVUB 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 BVUB to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the BVUB.
- 14. By its signature below, the BVUB voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8th day of September, 2006.



David K. Paylor, Director
Department of Environmental Quality

The Bristol Virginia Utilities Board voluntarily agrees to the issuance of this Order.

Name: Wes Rosenbalm

Title: President and CEO

Date: April 11, 2006

State of Virginia

City/County of Bristol

The foregoing instrument was acknowledged before me this 11 day of April, 2006,

by Wes Rosenbalm, who is President & CEO of the Bristol Virginia Utilities
(name) (title)
Board, on behalf of the Bristol Virginia Utilities Board.

Linda R Davis
Notary Public

My commission expires: 12/31/2009

APPENDIX A

In order to comply with the provisions of the State Water Control Law and Regulations and the Permit, the BVUB agrees to implement the following actions by the dates noted below:

1. The BVUB shall report to the SWRO any unauthorized discharges, unusual or extraordinary discharges, or any noncompliance which may adversely affect state waters or may endanger public health immediately upon discovery (within 24 hours), with written followup by letter within 5 days after discovery of the discharge, as outlined in Parts II.G, H and I of the Permit.
2. The BVUB shall submit for review and approval an up-to-date, revised Operations and Maintenance Manual within 60 days from the effective date of this order. This submittal shall incorporate changes implemented as a result of the fish kill, as described in the letter received by DEQ from the BVUB on February 6, 2006, e.g., permanently sealing or blocking of floor drains, installing additional valves, with daily closure of all valves at the end of the workshift required, installation of new supply lines to the sodium hypochlorite pumps, daily visual inspection of all chemical supply lines and valves, and installation of sight tubes with tank level indicators on each hypochlorite tank. Upon approval, the revised Manual shall become an enforceable part of the Permit, as stated in Part I.B.3 of the Permit.
3. With execution of this Order, Permit Special Condition Part I.B.6 of the Permit is activated. Effluent monitoring frequencies for Flow, pH and Total Suspended Solids shall be increased from 1/3M each to 1/Month each.
4. With execution of this Order, Part II.D of the Permit, Duty to Provide Information, is invoked to require effluent monitoring for Total Residual Chlorine (“TRC”). Analysis shall be of a grab sample, with a frequency of three per day (beginning and end of workday, and during a period of peak discharge flow), for a monitoring period of six months. The discharge shall be reported as in Item No. 1 above, as an unauthorized, unusual or extraordinary discharge, at any time when the TRC concentration in the effluent is equal to, or greater than 1.0 mg/l.
5. The BVUB shall submit a report and evaluation of the effluent TRC monitoring by December 10, 2006. Per Part II.D of the Permit, information submitted may be utilized “to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit”. If data reveals that the Facility discharge has a reasonable potential to violate the Virginia Water Quality Standard (acute standard) of 19µg/l TRC in Wolf Creek, the BVUB shall submit plans and specifications for installation of dechlorination no later than 90 days after notification by DEQ that dechlorination is required. This submittal shall also include a schedule for construction, and a date for meeting of a final effluent TRC limit placed in a modified or revoked and reissued permit. Upon approval of plans and specifications by DEQ, said schedule of construction shall become a part of and

enforceable under the terms of this order. In no event shall completion of construction of dechlorination facilities occur longer than 180 days after DEQ approval of plans and specifications.

6. All reports to be submitted to the SWRO shall be mailed to the attention of Ruby Scott, Compliance Auditor, P. O. Box 1688, Abingdon, VA 24212.
7. None of the above items modify or change the Permit and all requirements of the Permit shall remain in effect.