COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801
(540) 574-7800 Fax (540) 574-7878
www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
THE CITY OF CHARLOTTESVILLE

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 City of Charlottesville, regarding its collection system, for the purpose of resolving certain violations of the State Water Control Law and the Regulation.

SECTION B: Definitions

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

1. "ACSA" means the Albemarle County Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* ACSA 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. "The City" or "Charlottesville" means the City of Charlottesville, a political subdivision of the Commonwealth of Virginia. Charlottesville is a person within the meaning of Va. Code § 62.1-44.3.

4. "CTC" means Certificate to Construct.

5. "CTO" means Certificate to Operate.

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

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

8. "Facility" or "Plant" means the Moores Creek Regional Sewage Treatment Plant owned and operated by the RWSA which is located at 695 Moores Creek Lane in Charlottesville, Virginia. The Facility treats and discharges sewage and other municipal wastes for the residents and businesses of the City of Charlottesville, the University of Virginia and portions of Albemarle County.

9. "I&I" means Inflow and Infiltration.

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

11. "O&M" means operations and maintenance.

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. VA0025518, which was issued under the State Water Control Law and the Regulation to the RWSA on May 1, 2006 and which expires on April 30, 2011.

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. "RWSA" means the Rivanna Water and Sewer Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* RWSA is a "person" within the meaning of Va. Code § 62.1-44.3.

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

19. "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.

20. "STP" means sewage treatment plant.

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

22. "VAC" means the Virginia Administrative Code.

23. "VPDES" means the Virginia Pollutant Discharge Elimination System.

24. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

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

SECTION C: The Board Findings of Facts and Conclusions of Law

1. The City owns and operates a gravity sewage collection system, which serves customers in the City of Charlottesville, Virginia. The City's collection system is connected to the Facility. The collection system is comprised of approximately 167 miles of sewer lines, with 5,376 manholes. The system has 14,065 customers (12,469 residential and 1,595 non-residential customers) within a population of 42,218 people.

2. RWSA owns and operates the Facility and a sanitary sewer transmission system, which includes both gravity and force mains, which serves customers in the City, at the University of Virginia and in portions of Albemarle County, Virginia. RWSA is a wholesale wastewater utility, receiving and treating wastewater from the collection

systems owned and operated by the City and ACSA. The Permit authorizes RWSA to discharge treated sewage and other municipal wastes from the Facility, to Moores Creek, in strict compliance with the terms and conditions of the Permit.

3. The Rivanna River is located in the James (Middle) River Basin. The Rivanna River from its confluence with North/South Fork Rivanna downstream to its confluence with Moores Creek is listed in DEQ's 303(d) report as impaired for benthics and E. coli. The source of impairment is attributed to non-point source discharges.

   Moores Creek is located in the James (Middle) River Basin. Moores Creek from its confluence with the Ragged Mountain Dam receiving stream downstream to its confluence with the Rivanna River is listed in DEQ's 303(d) report as impaired for benthics, E. coli and fecal coliform. The impairment is attributed to urban runoff / urban non-point discharges (urbanized-high density area), wildlife other than waterfowl, other non-point source discharges and agriculture.

   Meadow Creek is located in the James (Middle) River Basin. Meadow Creek from where it becomes a perennial stream downstream to its confluence with the Rivanna River is listed in DEQ's 303(d) report as impaired for benthics, E. coli and fecal coliform. The impairment is attributed to urban runoff / urban non-point discharges (urbanized-high density area), wildlife other than waterfowl, and other non-point source discharges.

   Lodge Creek is located in the James (Middle) River Basin. Lodge Creek has not been assessed for any of Virginia's designated uses.

4. The design flow of the Facility has been rated and approved as 15 MGD, measured as a monthly average flow.

5. Since 2006, the City, RWSA and ACSA have worked together to conduct flow studies, analyze flow data, assess wet weather limitations, calibrate a transmission system computer model, forecast future dry weather flows through land development projections and identify inflow and infiltration reduction goals across all sewer collection systems connected to the Facility. The goal of these projects is to assure adequate capacity in the transmission and treatment systems with emphasis on addressing unpermitted discharges. The three entities are working cooperatively to upgrade their respective sewer collection systems.

6. In reporting and submitting letters of explanation for unpermitted discharges, as required by the Regulation, the City has reported unpermitted discharges to State waters from its collection system during the period February 2008 through March 2011. The City attributed the unpermitted discharges to I&I into its collection system during periods of heavy rainfall and certain transmission system restrictions. The majority of the

unpermitted discharges were to the Rivanna River, with some others to Lodge Creek, Moores Creek and Meadow Creek.

7. On April 2, 2010, Department staff met with representatives of the City, RWSA and ACSA to discuss the unpermitted discharges, the capacity and collection system restrictions that led to the discharges and the necessary corrective actions undertaken and planned for the future. DEQ requested the three entities each submit a plan and schedule of corrective actions to address I&I and capacity issues in their individual collection systems.

8. On April 21, 2010, VRO issued Warning Letter No. WL-10-04-VRO-002 to the City for the unpermitted discharges to State waters from July 2008 through March 2010.

9. By letter dated May 6, 2010, the City responded to the Warning Letter laying out its programs and procedures currently in place or planned to address the unpermitted discharges.

10. By letter dated May 27, 2010, the City submitted to DEQ a summary of completed and in-progress corrective actions, and a plan and schedule of future corrective actions to address the unpermitted discharges.

11. 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."

12. 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.

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

14. The Department has issued no permits or certificates to the City.

15. Moores Creek, the Rivanna River, Meadow Creek, and Lodge Creek are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.

16. Based on the City's letters to DEQ, the Warning Letter, the April 2, 2010 meeting, and file reviews, the Board concludes that the City has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, because untreated sewage and municipal wastes from the City's collection system have been discharged to State waters and these discharges were not in compliance with a permit or certificate issued by the Board, the Regulation and the Va. Code, as described in paragraphs C(6) and C(8) above.

17. In order for the City to provide for compliance with the Regulation and Va. Code § 62.1-44.5, DEQ and representatives of the City 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 City and the City hereby agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the City for good cause shown by the City, 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 described 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 City admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.

4. The City consents to venue in the Circuit Court of the City of Charlottesville for any civil action taken to enforce the terms of this Order.

5. The City 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 City 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.

The City does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.

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 City 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 City shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The City 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 City 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 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 City. Nevertheless, the City 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 City 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 City.

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

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 City voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5th day of August, 2011.

Amy T. Owens, Regional Director
Department of Environmental Quality

The City of Charlottesville voluntarily agrees to the issuance of this Order.

Date: 3/22/11 By: Maurice Jones, City Manager
(Person) (Title)
The City of Charlottesville

Commonwealth of Virginia
City/County of Charlottesville

The foregoing document was signed and acknowledged before me this 22nd day of March, 2011, by Maurice Jones who is City Manager of the City of Charlottesville on behalf of the City of Charlottesville.

Terry Bentley
Notary Public

187882
Registration No.

My commission expires: April 30, 2012

Notary seal:

TERRY L. BENTLEY
NOTARY PUBLIC
REGISTRATION # 187882
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES
APRIL 30, 2012

APPENDIX A
SCHEDULE OF COMPLIANCE
THE CITY OF CHARLOTTESVILLE

I&I Corrective Actions

The City shall conduct collection system rehabilitation work as laid out in its May 27, 2010 letter, on the following schedule:

Stadium Road Basin

1. **By December 31, 2012**, the City shall complete construction of the Stadium Road Trunk Sewer project.

2. **By June 30, 2012**, the City shall complete design of the Valley Road Interceptor project.

3. **By December 31, 2014**, the City shall complete construction of the Valley Road Interceptor project.

4. **By June 30, 2011,** the City shall complete the SSES of Basin 13 and Basin 19 of the Stadium Road Basin.

5. **By August 31, 2012**, the City shall complete the rehabilitation of defects identified by the SSES in Basin 13 and Basin 19 of the Stadium Road Basin.

6. **By June 30, 2011**, the City shall complete flow monitoring of Basin 21 as part of the Stadium Road Basin.

7. **By June 30, 2012**, the City shall complete the SSES of Basin 21 of the Stadium Road Basin.

8. **By December 31, 2015**, the City shall complete rehabilitation of defects identified by the SSES in Basin 21 of the Belmont area in the Stadium Road Basin.

Lower Rivanna Area

9. **By June 30, 2011**, the City shall complete the SSES of Basins 1, 2 and 3 of the Lower Rivanna Area.

10. **By March 31, 2014**, the City shall complete rehabilitation of defects identified by the SSES in Basins 1, 2 and 3 of the Lower Rivanna Area.

Schenks Branch Basin

11. **By March 1, 2012**, the City shall complete rehabilitation of defects identified by the SSES work in the Schenks Branch Basin.

Miscellaneous Areas/Basins

12. **By June 30, 2011**, the City shall complete cleaning and TVing of the 18 inch interceptor in Basin 22 of the Meadow Creek project, the 8 inch and 12 inch collection sewer in Basin 12 of the Druid Avenue project, Basin 20 of the Jefferson Park Avenue project and Basin 11 of the Moores Creek project and provide to DEQ for review and approval a plan and schedule for completing any rehabilitation of defects identified by the TV work. The City shall respond to any comments on the plan and schedule **within 30** days of receipt of written comments. Upon approval of the corrective action plan and schedule, said plan and schedule shall be incorporated by reference into this Order and become enforceable as part of this Order.

13. The City shall submit quarterly progress reports to DEQ, with the first report being due **July 10, 2011.** Subsequent progress reports will be due by **October 10, January 10, April 10 and July 10,** until the cancellation of this Order. The quarterly progress reports shall contain:

    a. a summary of all work completed since the previous progress report in accordance with this Order;
    b. a projection of the work to be completed during the upcoming quarterly period in accordance with this Order; and
    c. a statement regarding any anticipated problems in complying with this Order.

14. No later than **14 days** following a completion date identified in the above schedule of compliance the City shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

15. **DEQ Contact**

    Unless otherwise specified in this Order, City shall submit all requirements of Appendix A of this Order to:

    Steve Hetrick
    Enforcement Specialist Sr.
    VA DEQ –Valley Regional Office
    P.O. Box 3000

Harrisonburg, VA 22801
(540) 574-7833 Phone
(540) 574-7878 Fax
Steven.hetrick@deq.virginia.gov