COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
THE TOWN OF CHRISTIANSBURG
FOR THE
TOWN OF CHRISTIANSBURG
WASTEWATER TREATMENT FACILITY
VPDES PERMIT NO. VA0061751

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 Town of Christiansburg, regarding the Christiansburg Wastewater Treatment Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable 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. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

3. "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.

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, as described in Va. Code § 10.1-1185.

6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10

7. "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.

8. "Facility" means the Town of Christiansburg Wastewater Treatment Facility located at 2557 Crab Creek Road, Christiansburg, Virginia, which treats and discharges sewage and other municipal wastes for the residents and businesses of the Town of Christiansburg.

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

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

11. "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.

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, 9 VAC 25-31-10 *et seq.*

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

16. "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.

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

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

19. "VAC" means the Virginia Administrative Code.

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

SECTION C: Findings of Fact and Conclusions of Law

1. The Town owns and operates the Facility. The Permit allows the Town to discharge treated sewage and other municipal wastes from the Plant, to the New River, in strict compliance with the terms and conditions of the Permit.

2. Crab Creek and its tributaries are located in the New River Basin. Crab Creek is listed in DEQ's *Draft 2012 305(b)/303(d) Water Quality Assessment Integrated Report* as impaired for E. Coli. The sources of the impairment are listed as discharges from municipal separate storm sewer systems, livestock (grazing and feeding operations), municipal (urbanized high density area), wastes from pets, wildlife other than waterfowl, and unspecified domestic waste.

3. On April 10, 2012, a fish kill was reported to the Department.

4. On April 11, 2012, Department staff responded to the reported fish kill on Crab Creek in Christiansburg, Virginia. Department staff observed a fish kill, estimated using American Fisheries Society methods, of 2,550 fish. The fish kill was observed

originating from stormwater outfall 002 of the Facility and continuing downstream approximately 990 meters.

5. Department staff spoke with Town staff during the course of the Department's investigation. Town staff stated that chlorinated water was unintentionally released into Crab Creek coinciding with the time and location of the fish kill. Town staff members were trying to locate a leak within the Facility using chlorinated water and a chlorine monitor in an attempt to locate the leak, which accidently discharged to Crab Creek.

6. On April 13, 2012 the Town submitted a letter to the Department which explained the activities at the Facility which resulted in the release to Crab Creek (investigation to determine the source of an unexplained high volume of stormwater from stormwater outfall 002). The letter also explained the actions taken by the Town to correct the problem and measures implemented to ensure that the accidental release will not occur again (purchase of non-toxic dye tracer for use in future testing).

7. 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, or otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses."

8. 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, or any noxious or deleterious substances; or otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

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

10. The Department has issued no permits or certificates to the Town for the discharge of chlorinated water from the Facility's stormwater outfall 002.

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

12. Based on the Town's submittal of April 13, 2012 detailing the April 10, 2012 release and the results of the April 11, 2012 fish kill investigation, the Board concludes that the Town has violated Va. Code § 62.1-44.5 and 9 VAC 25-31-50, by discharging chlorinated water from the Facility's stormwater outfall 002 into Crab Creek without authorization under a permit or certificate issued by the Board, which resulted in a fish kill, as described in paragraph C(3) through C(6), above.

13. The Town has submitted documentation that verifies that the violation as described in paragraphs C(3) through C(6), above, has been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Town of Christiansburg, and the Town of Christiansburg agrees to:

1. Pay a civil charge of **$13,650** within 30 days of the effective date of the Order in settlement of the violations cited in this Order;

2. Reimburse DEQ **$1,100.69** for DEQ fish kill investigative costs within 30 days of the effective date of the Order;

3. Reimburse Department of Game and Inland Fisheries ("DGIF") **$295.18** for DGIF fish replacement costs within 30 days of the effective date of the Order.

Payment shall be made by separate checks, certified checks, money orders or cashier's checks payable to:

1. the "Treasurer of Virginia" for the civil charge and for the DEQ fish kill investigative costs (one check);

2. the "Department of Game and Inland Fisheries" for the DGIF fish replacement costs (one check);

and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The Town of Christiansburg shall include its Federal Employer Identification Number (FEIN) 54-6001215 with the payments and shall indicate that the payment of the civil charge is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF); that payment of the DEQ fish kill investigative costs is for reimbursement of DEQ expenditures; and that the payment of the DGIF fish replacement costs is for the Department of Game and Inland Fisheries.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Town 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 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 Town admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. The Town 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 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 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 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 Town shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town 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 Town. 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 Director or his designee terminates the Order after the Town has completed all of the requirements of the Order;

b. The Town 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 Town.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town 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 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 Town 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 voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28th day of September, 2012.

Robert J. Weld, Regional Director
Department of Environmental Quality

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

Date: 22 June 12 By: _____, Town Manager
Barry Helms
Town of Christiansburg

Commonwealth of Virginia
~~City~~/County of Montgomery

The foregoing document was signed and acknowledged before me this 22nd day of June, 2012, by Barry Helms who is the Town Manager of the Town of Christiansburg on behalf of the Town.

Notary Public

7110793
Registration No.

My commission expires: 1/31/15

Notary seal: