COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2103
www.deq.virginia.gov

Doug Domenech
Secretary of Natural Resources

David K. Paylor
Director

Maria R. Nold
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
CITY OF CHESAPEAKE
FOR
LAKE GASTON WATER TREATMENT PLANT

Virginia Pollutant Discharge Elimination System Permit No. VA0091405

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 Chesapeake, regarding the Lake Gaston Water Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable Permit and the VPDES Regulation.

SECTION B: Definitions

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

1. "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.

2. "City" means the City of Chesapeake, a political subdivision of the Commonwealth of Virginia. The City is a "person" within the meaning of Va. Code § 62.1-44.3.

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

5. "Facility" means the City of Chesapeake Lake Gaston Water Treatment Plant located at 5614 West Military Highway in Chesapeake, Virginia, which treats raw water for public distribution.

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

7. "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.

8. "Permit" means VPDES Permit No. VA0091405 effective May 3, 2009 and expires on May 2, 2014.

9. "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.

10. "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.

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

12. "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.

13. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

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

15. "VAC" means Virginia Administrative Code.

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

17. "VPDES Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. The City owns and operates the Facility in Chesapeake, Virginia at which it treats raw water from 3 ground water wells, raw water purchased from the City of Norfolk western lake supply system located in the City of Suffolk, and can treat raw water from Lake Gaston. The Permit allows the City to discharge wastewater from the treatment process, through outfall 001, to an unnamed tributary of Goose Creek and the Western Branch of the Elizabeth River, within limits for pH, total suspended solids, dissolved oxygen, total phosphorus and total residual chlorine.

2. On April 8, 2010, the City reported that 141,600 gallons of water treated with ferric chloride and sodium hydroxide had discharged from the Facility flocculation basins due to operator error. A subsequent letter from the City on April 15, 2010 stated that the discharge entered state waters , leaving the site through the Facility perimeter ditch system by way of a culvert to the ditch system running south along the east side of the Facility property. The ditch system connects by unnamed tributaries to the Western Branch of the Elizabeth River. The amount of the discharge that reached state waters is unknown. Warning Letter No. W2010-05-T-1023 was issued on May 7, 2010 to the City for the unpermitted discharge of a pollutant to state waters.

3. The City reported that following the April 8, 2010 discharge, the City counseled all shifts about the importance of complying with regulatory requirements and permits.

4. On July 1, 2010, the City reported that 120,883 gallons of partially treated raw water had overflowed the Facility "floc zone", with approximately 50,000 gallons of the flocculated water leaving the site through the Facility perimeter ditch before flowing to an external ditch and ditch system leading to the Western Branch of the Elizabeth River. According to the report, the overflow resulted from a programming failure in the Facility treatment system logic controllers which shut down the treatment system yet maintained the intake of raw water, causing an automatic overflow of flocculated water to the floc zone and subsequently to state waters through the same ditch system as the April 8, 2010 discharge. The City estimated the total duration of the discharge was approximately 29 minutes. The City reported that the discharge of flocculated water contained 19 mg/l ferric chloride, 5.2 mg/l sodium hydroxide, and 5 mg/l powdered activated carbon.

5. The City reported that following the July 1, 2010 discharge, the City made improvements to the Facility to correct the design flaw that caused this discharge.

6. On September 7, 2010, TRO issued Notice of Violation No. W2010-09-T-0002 to the City for the unpermitted discharge on July 1, 2010 of 50,000 gallons of partially treated water from the Facility to state waters.

7. On September 15, 2010, DEQ staff met with City personnel to discuss the unpermitted discharges and the NOV.

8. Va. Code § 62.1-44.5(A) 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."

9. The Permit at Part II.F. prohibits unpermitted discharges of pollutants into state waters.

10. The VPDES 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 City other than VPDES Permit No. VA0091405.

13. The Western Branch of the Elizabeth River is listed as impaired for exceeding enterococcus bacteria and dissolved oxygen due to agriculture, municipal and industrial point source discharges. The Western Branch of the Elizabeth River provides beneficial uses including recreation. The Western Branch of the Elizabeth River is a surface water located wholly within the Commonwealth and is "state waters" under State Water Control Law. There is no evidence that the discharges described herein have contributed to the listed impairment or that they have affected the beneficial uses of the Western Branch of the Elizabeth River.

14. Based on the reports from the City of the April 8, 2010 and July 1, 2010, the Board concludes that unpermitted discharges from the Facility reached State Waters, and that the City has violated the Va. Code, the VPDES Regulation and the Permit by discharging partially treated waste water from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C2 and C3, above.

SECTION D: Agreement and Order

1. Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the City, and the City agrees to pay a civil charge of $7,735 in settlement of the violations cited in this Order, to be paid as follows.

2. The City shall pay $775.00 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 shall be delivered to:

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

The City shall include its Federal Employer Identification Number (FEIN) [54-0721442] 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).

3. The City shall satisfy $6,960.00 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.

4. The net project costs of the SEP to the City shall not be less than the amount set forth in Paragraph D.3. If it is, the City shall pay the remaining amount in accordance with Paragraph D.1 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 party 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.

5. By signing this Order the City certifies that it has not commenced performance of the SEP.

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

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

8. The Department has the sole discretion to:

   a. Authorize any alternate, equivalent SEP proposed by the City; and

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

9. Should the Department determine that the City has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall notify the City in writing. Within 30 days of being notified, the City shall pay the amount specified in Paragraph D.3 above as provided in Paragraph D.2 above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the 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 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 the purposes of this Order and subsequent actions with respect to this Order only, the City admits the jurisdictional allegations and agrees not to contest, but does not admit, the findings of fact, and conclusions of law contained herein.

4. The City consents to venue in the Circuit Court of the City of Chesapeake 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.

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 show 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, 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 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 Director of his designee terminates the Order after the City has completed all of the requirements of the Order;

b. 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

c. 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 25 day of June, 2012.

Regional Director
Department of Environmental Quality

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

Date: 3/19/12 By: City Manager
(Person) (Title)
City of Chesapeake

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 19 day of March, 2012, by William E. Harrell who is City Manager of the City of Chesapeake, on behalf of the City of Chesapeake.

Wanda B. Futrell
Notary Public

188712
Registration No.

My commission expires: 30 September 2015

Notary seal:

Wanda B. Futrell
Commonwealth of Virginia
Notary Public
ID #188712

APPENDIX A

SUPPLEMENTAL ENVIRONMENTAL PROJECT

In accordance with Va. Code § 10.1-1186.2, the City shall perform the SEP identified below in the manner specified in this Appendix A.

1. The SEP to be performed by the City is a donation in the amount of $6,960.00 to the Elizabeth River Project "Living River Restoration Trust" for the "Paradise Creek Nature Park" project.

2. The $6,960 shall be paid by check, certified check, money order, or cashier's check payable to:

   The Living River Restoration Trust
   Post Office Box 907
   Portsmouth, VA 23704

3. The payment of the $6,960 SEP funds to the Elizabeth River Project "Living River Restoration Trust" for the "Paradise Creek Nature Park" shall be completed within 30 days of the effective date of this Order.

4. The City shall verify its completion of the SEP in writing, either in the form of a certification from a Certified Public Accountant or a certification from a responsible City official that the SEP has been completed in accordance with the terms of this Order. The City shall submit the verification to DEQ within 60 days from the completion of the SEP.

5. If the SEP has not or cannot be completed as described in this Order, the City shall notify DEQ in writing no later than 30 days of discovery of the inability to complete the SEP. Such notification shall include:

   a. An alternate SEP proposal, or

   b. Payment of the amount specified in Paragraph D.3 of this Order as described in Paragraph D.2 of this Order.

6. Unless otherwise specified in this Order, documents to be submitted to DEQ regarding the SEP shall be sent to:

   Regional Director
   Department of Environmental Quality
   Tidewater Regional Office
   5636 Southern Blvd
   Virginia Beach, VA 23462