COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

TOWN OF ELKTON STP

VA0026433

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 Town of Elkton ("Elkton") for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning 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. "STP" means sewage treatment plant.

7. "Elkton" or "Town" means the Town of Elkton which owns the sewage treatment plant.

8. "Facility" means the Elkton STP located in Rockingham County, Virginia.

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

10. "Permit" means Virginia Pollutant Discharge Elimination System Permit No. VA0026433, which became effective January 11, 2007 and expires December 31, 2011.

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

12. "NOV" means Notice of Violation.

13. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.

14. "PER" means preliminary engineering report.

15. "DMR" means discharge monitoring report.

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

17. "BOD" means biochemical oxygen demand.

18. "TSS" means total suspended solids.

19. "CTC" means certificate to construct.

20. "CTO" means certificate to operate.

21. "UV" means ultraviolet disinfection.

22. "I&I" means inflow and infiltration.

23. "MGD" means millions of gallons per day.

SECTION C: Findings of Fact and Conclusions of Law

1. Elkton owns and operates the Facility located in Rockingham County, Virginia which serves the Town's population of approximately 2042. The Facility is subject to the

Permit which authorizes the Facility to discharge treated wastewater to South Fork Shenandoah River, in the Shenandoah River subbasin, Potomac River basin, in strict compliance with the terms and conditions of the Permit.

2. The design capacity of the Facility has been rated and approved as 0.4 MGD.

3. On January 5, 2008, DEQ conducted an inspection of the Facility in response to a pollution complaint. DEQ staff observed numerous operational and maintenance and monitoring/reporting problems at the Facility during the January 5th inspection. The inspection report dated January 15, 2008, recorded staff observations and documents the Facility's problems including:

   a. Staff review of the Facility's records showed that the Town experienced unauthorized discharges of solids/unusual discharges from the clarifiers on December 10 and December 22 through approximately December 29, 2007 in violation of Permit Part II.F.,
   b. Staff review of the Facility's and DEQ records showed that the Town failed to report the unusual discharges on December 10 and December 22 through approximately December 29, 2007 within 24 hours in violation of Permit Parts II.G. and II.H.,
   c. Staff observed the intentional bypass of wastewater from an idle aeration basin (being operated as an anaerobic digester) around further treatment units including no disinfection and noted the failure to notify DEQ about previous intentional bypasses that were acknowledge by the operator in violation of Permit Part II.U.3.,
   d. Staff observed that the north aeration basin has been operated for the past year as an anaerobic digester, which is not in accordance with the approved O&M Manual for the Facility in violation of Permit Part II.Q.,
   e. Facility records show that during the unusual discharges of December 10 and December 22 through December 29, 2007, unlicensed plant operators made and executed operational decisions without contacting the licensed operator, although a Class III license is required for operational decisions at the Facility in violation of Permit Part I.F.8.,
   f. Staff's review of Facility documents showed that the Town had not been monitoring E. coli in the effluent as required by the Permit in violation of Permit Part I.A.1.,
   g. Staff's review of Facility records showed that the Town has failed to perform a survey of significant commercial users in violation of Part I.D.2.,
   h. Staff observed that the Town constructed and was operating UV treatment units without obtaining a CTC or CTO in violation of Permit Part I.F.5., and
   i. Staff's review of the Facility's records show the improper reporting of monitoring data in violation of Permit Part II.Q. and Part II. U.3.

4. Virginia Code § 62.1-44.5 and the Permit Regulation 9 VAC 25-31-50 A. stipulate that except in compliance with a VPDES permit issued by the Board, it shall be

unlawful for any person to discharge sewage into state waters. The Permit Part II.L. requires the permittee to comply with all conditions of the Permit.

5. DEQ issued NOV No. W2008-02-V-0006 on February 8, 2008, to Elkton for unauthorized discharges of solids on December 10 and December 22 through December 29, 2007, January 5 and February 7, 2008, the unauthorized bypass of treatment units including disinfection on January 5, 2008, various O&M problems, failure to perform an industrial survey, and failure to properly monitor E. coli in violation of Permit requirements as noted above in Paragraph 3.

6. On February 20, 2008, DEQ met with representatives of the Town to discuss the apparent violations cited in the NOV and resolution of those violations. During the February 20, 2008 meeting DEQ requested the Town submit a plan and schedule to address the issues at the Facility. Also, during the meeting, the Town informed DEQ that its chief operator had been discharged for failing to properly operate and maintain the Facility.

7. On March 24, 2008, DEQ received Elkton's plan and schedule of corrective actions to address the Facility's problems. Sections of this plan and schedule have been incorporated into Appendix A of this Order.

8. DEQ issued NOV No. W2008-04-V-0003 on April 3, 2008, to Elkton for exceedances of the Permit's BOD and TSS effluent limitations during February 2008, unauthorized discharges of solids on February 7, 11, 13,16, and 23, 2008, and failure to submit the Water Quality Standards-once per 5 years monitoring as required by the Permit.

9. DEQ issued NOV No. W2008-05-V-0003 on May 6, 2008, to Elkton for exceedances of the Permit's BOD, TSS and E. coli effluent limitations during March 2008, unauthorized discharges of solids on March 1, 2, 5, 6 and 9, 2008, and again failing to submit the Water Quality Standards-once per 5 years monitoring as required by the Permit.

10. At the times noted in Paragraphs 3, 8 and 9 above, the Town was discharging sewage to state waters and, therefore, violated the Va. Code, the Regulation and the Permit by failing to comply with Permit conditions at the time of said discharges.

11. DEQ issued NOV No. W2008-05-V-0003 on June 12, 2008, to Elkton for exceedances of the Permit's E. coli effluent limitations during May 2008, unauthorized discharges of solids on April 3, 2008, inspection deficiencies and again failing to submit the Water Quality Standards-once per 5 years monitoring as required by the Permit.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders Elkton and Elkton agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Elkton, and Elkton

voluntarily agrees, to pay a civil charge of **$16,170** within **30 days** of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to: $16,170

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

Either on a transmittal letter or as a notation on the check, Elkton shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

2. During the estimated one year's interim period during which Facility improvements will be completed, the Board orders Elkton and Elkton agrees that it will operate the STP in a workmanlike fashion so as to produce the best quality effluent that the Facility is capable of producing.

SECTION E: Administrative Provisions

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

2. This Order only addresses and resolves those violations specifically identified herein in Section C. 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 as may be authorized by law; or (3) taking subsequent action to enforce the 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, Elkton admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. Elkton consents to venue in the Circuit Court of Rockingham County for any civil action taken to enforce the terms of this Order.

5. Elkton declares it has received fair and due process under the Administrative Process Act, Va. 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 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 enforce this Order.

6. Failure by Elkton 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. Elkton 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 occurrence. Elkton shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Elkton shall notify the DEQ Regional Director in writing 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 Director of the Valley Regional Office within 24 hours of learning of any condition above, which Elkton 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 Elkton. Notwithstanding the foregoing, Elkton 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. Elkton petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or

b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Elkton.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Elkton from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of Elkton 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 Elkton to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Elkton.

13. By its signature below, Elkton voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of October, 2008.

Amy T. Owens

Amy T. Owens, Regional Director
Department of Environmental Quality

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

By: _____

Title: Mayor

Date: 7-8-08

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this

8th day of July, 2008, by Wayne E. Printz
(name)

who is Mayor of the Town of Elkton, on behalf of said Town.
(title)

Barbara B. Carey 168243
Notary Public

My commission expires: Oct. 2010

APPENDIX A
TOWN OF ELKTON STP
SCHEDULE OF COMPLIANCE

1. **By July 15, 2008**, Elkton shall retain at least one full time classified operator holding, at minimum, a Class III wastewater operator's license, to be the operator in charge of the Facility. Elkton shall also have retained two additional wastewater operators who shall report to and consult with the chief operator to make operational decisions.

   In addition, Elkton shall ensure that an operator is present at the Facility 12 hours a day in order to ensure that solids losses from the Facility's clarifiers or other treatment units are minimized.

2. **By July 15, 2008,** Elkton shall empty, inspect and repair the south aeration basin to ensure that the unit is capable of being operated in accordance with procedures required by the Facility's CTO, the O&M Manual and the Permit.

3. **By August 1, 2008**, Elkton shall complete its review for completeness and correctness, and correction of plant records and submit a copy of the revised records to DEQ.

4. **By August 1, 2008**, Elkton shall complete its evaluation of the UV disinfection system for compliance with the SCAT regulations and submit to DEQ a report with any necessary documents to demonstrate that compliance.

5. **By August 1, 2008**, Elkton shall install a UV intensity/turbidity and high flow alarms with remote dialer to notify the Facility operator of discharges of solids in amounts which exceed design parameters for the unit.

6. **By August 15, 2008**, Elkton shall conduct a survey of significant commercial users connected to the Town's collection system, in accordance with Permit requirements and submit the results to DEQ for review and approval.

7. **By August 15, 2008**, Elkton shall develop and document standard operating procedures, including testing procedures, for the Facility, designed to ensure workmanlike operations, in accordance with O&M requirements, and that will ensure compliance with regulatory requirements and train the Facility's operators on those procedures.

8. **By August 15, 2008**, Elkton shall submit to DEQ for review and approval a High Flow Operations Plan to:

   a. develop and institute a wet weather operation procedure; and,
   b. ensure the continuation of proper, adequate and timely wasting and disposal of solids from the Facility to eliminate or reduce solids losses from the Facility;

Elkton shall respond to comments on the plan and schedule **within 30 days** of receiving written comments. Upon approval of the High Flow Operations Plan it shall be incorporated by reference and will become enforceable part of the Order.

9. **By August 15, 2008**, Elkton shall submit to DEQ for review and approval a PER for the proposed Facility upgrade to meet Permit effluent limitations and requirements. Elkton shall respond to any comments regarding the PER **within 30 days** of receipt of written comments.

10. **Within 90 days** of approval of the PER for the upgrade of the Facility's sludge dewatering and UV units necessary to ensure compliance with Permit requirements at current permitted design flows, Elkton shall submit for review and approval plans and specifications for upgrade of the Facility. Elkton shall respond to comments on the plans and specifications **within 30 days** of receipt of written comments. The plans and specifications shall address comprehensive solids handling processes including grit removal, clarification, and decanting capability of digesters.

11. **Within 90 days** of approval of the plans and specifications for the sludge dewatering improvements and UV improvements, Elkton shall begin construction of said improvements.

12. **Within 180 days** of beginning construction of the improvements, Elkton shall complete construction of the improvements.

13. **Within 30 days** of completing construction of the improvements, Elkton shall request a CTO for the improvements and submit to DEQ for review and approval revisions to the O&M Manual that incorporate any operational changes necessitated by the improvements. Elkton shall respond to any comments on the O&M Manual revisions **within 30 days** of receipt of written comments.

14. **By September 15, 2008**, Elkton shall to submit to DEQ a report, for review and approval, outlining what, if any, additional repairs and/or upgrades are needed to ensure full compliance with the Permit. The report shall include a plan and schedule for completing any additional repairs and/or upgrades. Elkton shall respond to comments on the plan and schedule **within 30 days** of receipt of written comments. Upon approval, the plan and schedule will be incorporated by reference and enforceable under this Order.

15. **By October 1, 2008**, Elkton shall submit to DEQ for review and approval a plan and schedule for conducting a sewer system evaluation study and repair program. This study and repair program is necessary to ensure that the Facility does not continue to experience hydraulic overloading during wet weather as Elkton has indicated has happened in the past. Elkton shall address comments on the plan and schedule **within 30 days** of receipt of written comments. Upon approval, the plan and schedule will be incorporated by reference and enforceable under this Order.

16. Elkton shall submit quarterly progress reports to DEQ, with the first report being due **October 10, 2008**. Subsequent Progress Reports will be due by **January 10, April 10, July 10, and October 10**, along with the Facility's Discharge Monitoring Report 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.

17. No later than **14 days** following a date identified in the above schedule of compliance Elkton 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.