COMMONWEALTH of VIRGINIA

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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WESTERN VIRGINIA WATER AUTHORITY
FOR
FALLING CREEK WATER FILTRATION PLANT
VPDES Permit No. VA0001465

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 Western Virginia Water Authority, regarding the Falling Creek Water Filtration Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and 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. "BRRO-R" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.

3. "Copper limit" means the applicable copper limit in the Permit.

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. "DMR" means Discharge Monitoring Report.

7. "Facility" or "Plant" means the Falling Creek Water Filtration Plant located at 3031 Laurel Glen Road, Bedford County, Virginia, which treats drinking water and treats and discharges water filter backwash, a form of industrial waste.

8. "Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business or from the development of any natural resources, as described in Va. Code § 62.1-44.3.

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

10. "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.

11. "Permit" means VPDES Permit No. VA0001465, which was issued under the State Water Control Law and the Regulation to WVWA on August 24, 2004 and which was administratively continued on August 7, 2009.

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

18. "VAC" means the Virginia Administrative Code.

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

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

SECTION C: Findings of Fact and Conclusions of Law

1. WVWA owns and operates the Plant in Bedford County, Virginia. The Permit allows WVWA to discharge treated industrial wastes from the Plant, to Falling Creek, in strict compliance with the terms and conditions of the Permit.

2. Falling Creek is located in the Roanoke River Basin. The relevant segment of Falling Creek is not listed in DEQ's 305(b) report.

3. In submitting its DMRs, as required by the Permit, WVWA has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for copper average concentration and copper maximum concentration, for the months of September, November and December 2008, and January through July 2009.

4. BRRO-R issued Notice of Violations for the copper limit exceedances as follows: NOV No. W2009-04-W-0001, issued April 9, 2009; NOV No. W2009-05-W-0001, issued May 7, 2009; NOV No. W2009-06-W-0001, issued June 17, 2009; NOV No. W2009-07-W-001, issued July 15, 2009; NOV No. W2009-08-W-0001, issued August 10, 2009; W2009-09-W-0001, issued September 4, 2009.

5. WVWA responded to the copper exceedances by planning a flow study of the Falling Creek and a water effects ratio study, both of which are anticipated to support calculation of higher effluent limits for copper.

6. In a letter dated January 12, 2010, the Virginia Department of Health conditionally approved a Preliminary Engineering Report ("PER") submitted by WVWA for eliminating the discharge from the Plant by returning backwash to the Plant headworks. WVWA intends to complete the work specified in the PER and eliminate the wastewater discharge from the Plant.

7. WVWA's operating logs indicate that it discharged treated wastewater from the Plant every day from September 1, 2008 through July 31, 2009.

8. 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."

9. 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.

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

11. The Department has issued no permits or certificates to WVWA for the Plant other than VPDES Permit No. VA0001465.

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

13. Based on the results of August 28, 2009 meeting and the DMRs referenced in Paragraph C(3) above, the Board concludes that WVWA has violated the Permit and Va. Code 62.1-44.5 and 9 VAC 25-31-50, by discharging treated industrial wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in Paragraph C(3) above.

14. In order for WVWA to return to compliance, DEQ staff and representatives of WVWA 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 WVWA, and WVWA agrees to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of $3,500.00 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, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104

Richmond, Virginia 23218

WVWA shall include its Federal Employer Identification Number (FEIN) (20-0897714) 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).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of WVWA for good cause shown by WVWA, 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, WVWA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. WVWA 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. WVWA 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 WVWA 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. WVWA 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. WVWA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. WVWA 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 WVWA 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 WVWA. Nevertheless, WVWA 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. WVWA 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 WVWA.

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

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, WVWA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 25th day of June, 2010.

Robert J. Weld

Robert J. Weld ~~Steven A. Dietrich~~, Regional Director
Department of Environmental Quality

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The Western Virginia Water Authority voluntarily agrees to the issuance of this Order.

Date: 3/15/10 By: Gary Robertson, Executive Director for Water Operations
(Person) (Title)
Western Virginia Water Authority

Commonwealth of Virginia
City/~~County~~ of Roanoke

The foregoing document was signed and acknowledged before me this 15th day of March, 2010, by Gary Robertson who is Executive Director Water Operations of Western Virginia Water Authority, on behalf of the Authority.

Mary J. Sweeney
Notary Public

7114172
Registration No.

My commission expires: 1-31-11

Notary seal:

MARY J. SWEENEY
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7114172
My Commission Expires Jan. 31, 2011

APPENDIX A
SCHEDULE OF COMPLIANCE

1. **DMR Exceedances**

   a. Not later than October 10, 2010, WVWA shall: i) complete construction of the modifications necessary to return backwash to the headworks structure of the water treatment plant in accordance with the PER referenced at Paragraph C(6) above, as amended; ii) cease discharging wastewater from the Facility; iii) submit a report to DEQ documenting completion of the above requirements; and iv) submit a permit termination form to DEQ for termination of the Permit.

   b. The parties acknowledge that during the period of corrective action, WVWA may experience additional violations of the same permit limitations for total recoverable copper which necessitate the corrective action. Accordingly, pending completion of the corrective action, WVWA shall operate the Plant in a manner that produces the best quality effluent of which it is capable, in order to minimize such additional violations and minimize potential impacts to water quality.

2. **DEQ Contact**

   Unless otherwise specified in this Order, WVWA shall make all submittals as required by Appendix A of this Order to:

   Robert Steele
   Regional Enforcement Coordinator
   VA DEQ –BRRO-R
   3019 Peters Creek Road
   Roanoke, VA 24019
   (540) 562-6777 (phone)
   (540) 562-6725 (fax)
   Robert.Steele@deq.virginia.gov