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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHWEST REGIONAL OFFICE
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Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

Allen J. Newman, P.E.
Regional Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
United States Department of Agriculture – Forest Service, Flatwoods Job Corps Civilian Conservation Center
FOR
Flatwoods Job Corps Civilian Conservation Center Sewage Treatment Plant
VPDES Permit No. VA0023027

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 United States Department of Agriculture – Forest Service, Flatwoods Job Corps Civilian Conservation Center, regarding the Flatwoods Job Corps Civilian Conservation Center Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law, the applicable regulation and VPDES Permit No. VA0023027.

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. The "303(d) report" is a subset of the "305(b) report".

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

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

6. "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.

7. "DMR" means Discharge Monitoring Report.

8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.

9. "Facility", "Plant" or "STP" means the United States Department of Agriculture – Forest Service, Flatwoods Job Corps Civilian Conservation Center Sewage Treatment Plant located at 2803 Dungannon Road (Route 72), Coeburn, Virginia, which treats and discharges treated sewage and other municipal wastes, for the Flatwoods Job Corps Civilian Conservation Center. The Facility consists of two treatment trains, two package plants run in parallel, whose flows rejoin and become one discharge.

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

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. "Permit" means VPDES Permit No. VA0023027, which was reissued under the State Water Control Law and the Regulation to the United States Department of Agriculture – Forest Service on May 15, 2010, and which expires on May 14, 2015. The permit was modified November 22, 2013 to reflect the fact that the Job Corps has planning and budgeting authority for the Facility.

13. "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.

14. "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.

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

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

17. "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.

18. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.

19. "USDA – Forest Service" or "Forest Service" means the United States Forest Service, a federal agency within the United States Department of Agriculture. USDA – Forest Service is a "person" within the meaning of Va. Code § 62.1-44.3

20. "USDA – Forest Service, Job Corps" or "Job Corps" means the United States Forest Service, Flatwoods Job Corps Civilian Conservation Center, a federal agency within the United States Department of Agriculture. USDA – Forest Service, Job Corps is a "person" within the meaning of Va. Code § 62.1-44.3

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

22. "VAC" means the Virginia Administrative Code.

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

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

SECTION C: Findings of Fact and Conclusions of Law

1. The USDA-Forest Service, Job Corps operates the Plant. The Permit allows the Job Corps to discharge treated sewage and other municipal wastes from the Plant to Corder Branch, in strict compliance with the terms and conditions of the Permit.

2. Corder Branch of Little Stony Creek is located in the Tennessee-Big Sandy River Basin, Clinch River Subbasin. It is classified as Section 2, Class IV; Special Standards: None. It is a Tier 1 waterbody and is considered intermittent, with a 7Q10 low flow value of 0.0 MGD. Corder Branch is not listed on the current 303(d) list.

3. On August 1, 2012, Warning Letter No. W2012-07-S-1002 was issued to the Forest Service, citing DMR effluent limit violations for both average and maximum concentrations for ammonia and total suspended solids for June, 2012. Also noted was the failure to submit any E. coli data, as requested by letter dated March 14, 2012. The Forest Service stated in a written response to the Warning Letter that the June effluent limit violations were caused by problems with air supply lines at both the No. 1 and No. 2 trains. Both air supply lines had to be repaired several times during the month. Also, the volume of air supplied to each train was increased to improve aeration.

4. On August 23, 2012, DEQ issued a letter to the Forest Service stating that a review of the E.coli data submitted to DEQ indicated that the levels of E.coli contained in the effluent of the STP "may not always meet the standards for the discharge of E.coli into State waters as limited by law and regulations". DEQ requested that the Forest Service begin monitoring E.coli at the discharge point of the STP on a weekly basis, recording the data as a geometric mean and submitting the Discharge Monitoring Report form, including the data and the date and time of each sample taken beginning with September, 2012 monitoring data.

5. On September 12, 2012, DEQ issued a letter to the Forest Service concerning the technical inspection conducted at the STP on August 28, 2012. The letter requested that the Forest Service submit written documentation of all measures taken to address the following: 1) maintaining the slide gate at the proper level for flow equalization at all times; 2) repair work on both train No. 1 and train No. 2 blower air supplies to stop major leaking; 3) repair/replacement of malfunctioning diffusers in the aeration tank of train No. 2; 4) calibration of the effluent flow meter; 5) removal of solids build-up in the chlorine contact tank; and 6) removal of any solids build-up in the effluent box where the dechlorinator is located.

6. On September 25, 2012, DEQ issued a letter to the Forest Service concerning the review of sampling analysis results from samples taken at the STP on August 28, 2012. The letter stated that "the analytical results of this sample indicate the discharge quality exceeded the (Total Suspended Solids maximum) concentration limitation of the VPDES Permit".

7. On November 1, 2012, Warning Letter No. W2012-10-S-1013 was issued to the Forest Service, citing DMR effluent limit violations for both average and maximum concentrations and average loading for total suspended solids for September, 2012. Also noted was the failure to submit dates and times of E. coli sampling for September, 2012, as requested by letter dated August 23, 2012. The Forest Service stated in a written response to the Warning Letter that, in response to the September total suspended solids effluent limit violations, the buildup of solids in the chlorine contact tanks had been removed and the flow level adjusted downward to approximately 25 to 26 gallons per minute. Forest Service staff stated verbally that missing information regarding date and time of E. coli sampling was an oversight and that missing information would be supplied for future sampling events.

8. On December 7, 2012, DEQ issued a letter to the Forest Service transmitting a copy of the compliance inspection report of the wastewater treatment works conducted on November 27, 2012. The letter requested that the Forest Service submit written documentation of all measures taken to address the following corrective actions identified in the report: 1) eliminate effluent non-compliances at the Facility; 2) repair/replace leaking air supply lines and malfunctioning diffusers in the aeration tanks; 3) remove solids build-up in the chlorine contact tank; 4) determine the cause of excessive solids losses to the chlorine contact tank and make corrections; and 5) determine the problem with influent pumps and make them operationally effective.

9. On January 24, 2013, Warning Letter No. W2013-01-S-1007 was issued to the Forest Service citing the following unresolved deficiencies: 1) train No. 1 and train No. 2 leaking blower air supplies; 2) malfunctioning diffusers in the aeration tank of train No. 2; 3) solids build-up in the chlorine contact tank; 4) invalid data for comparison purposes of the geometric means of weekly E.coli samples; and 5) lack of documentation from the Forest Service Supervisor authorizing the signing of DMRs by the person presently signing them.

10. On January 31, 2013, DEQ staff corresponded by telephone with Forest Service staff regarding the Warning Letter issued January 24, 2013. Forest Service staff indicated a letter would be sent to DEQ regarding DMR signatures. Additionally, Forest Service staff indicated they had not received the December 7, 2012 letter transmitting the November 27, 2012 inspection report. A copy of the report was forwarded electronically to Forest Service staff on January 31, 2013. Forest Service staff stated that Plant staff had been instructed that weekly samples would be collected regardless of and during staff vacations.

11. On February 21, 2013, DEQ staff received written correspondence from the Forest Service in response to the Warning Letter issued January 24, 2013. The letter, dated February 13, 2013, noted the following: 1) the Forest Service did not receive the compliance inspection report dated December 7, 2012 until it was sent electronically on January 31, 2013; 2) a contract was in place to remedy deficiencies at the Plant, but the contract is currently on hold; 3) Flatwoods Civilian Conservation Center is in the process

of adding sampling for E. coli to its contract for testing with Environmental Monitoring, Inc.; samples will be collected weekly; and 4) this letter served as notification to DEQ, authorizing specific Forest Service staff to sign DMRs for the Forest Service.

12. On March 12, 2013, NOV No. W2013-03-S-0003 was issued to the Forest Service which cited: 1) DMR effluent limit violations for BOD_5 average concentration, maximum concentration, average loading and TSS average concentration for January, 2013; 2) failure to collect weekly E. coli samples each month; 3) final effluent E.coli sampling analysis results demonstrating exceedance of the water quality standard for E.coli; and 4) unresolved deficiencies cited in Warning Letter No. W2013-01-S-1007 issued January 24, 2013. The Forest Service stated in a written response to the NOV that work had been completed on all items previously cited as needing repair (list of work provided). The Forest Service indicated that repairs made should help prevent future effluent limit violations, such as those which occurred in January, 2013. On May 28, 2013, DEQ received an electronic response to the NOV. It stated "[R]repairs have been completed for all work on the STP" and included an attachment detailing work completed.

13. On August 1, 2013, DEQ issued letters to the Forest Service transmitting copies of both technical and laboratory inspections conducted at the Facility on July 16, 2013. Requests for action regarding the laboratory inspection included submittal of the following to DEQ by September 1, 2013: 1) copies of an Initial Demonstration of Capability for the parameters of total residual chlorine and pH, fulfilling all requirements; 2) a copy of the test of buffering capability of DPD pillows used for total residual chlorine analysis; and 3) documentation that the Automatic Temperature Compensation on the Facility's pH meter has been verified by a NIST Traceable thermometer within the past year.

14. Part I, Section A. of the Permit sets forth the final effluent limits within which the Facility is authorized to discharge.

15. Part II, Section Q. of the Permit states, "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit…".

16. Part II, Section D. of the Permit states, "The permittee shall furnish to the Department, within a reasonable time, any information which the Board may request to determine…compliance with this permit. The Board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law…".

17. 9 VAC 25-31-110.B states, "All reports required by permits, and other information requested by the board shall be signed by a person described in subsection A of this section, or by a duly authorized representative of that person. A person is a duly

authorized representative only if: 1. The authorization is made in writing by a person described in subsection A of this section; 2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and 3. The written authorization is submitted to the department."

18. 9 VAC 25-260-170 states, "The following bacteria criteria (colony forming units (CFU)/100 ml) shall apply to protect primary contact recreational uses in surface waters...E.coli bacteria shall not exceed a monthly geometric mean of 126 CFU/100 ml in freshwater...2. Geometric means shall be calculated using all data collected during any calendar month with a minimum of four weekly samples...".

19. Virginia Code § 62.1-44.5 prohibits waste discharges or other quality alterations of state waters except as authorized by permit.

20. 9 VAC 25-31-50 states, "Except in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances...".

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

22. The Department has issued no permits or certificates to the Job Corps for the Facility other than VPDES Permit No. VA0023027.

23. Corder Branch is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.

24. Based on review of the August 28, 2012 sampling inspection results, technical inspections conducted August 28, 2012 and July 16, 2013, a lab inspection conducted July 16, 2013, a compliance inspection conducted November 27, 2012, and DMRs and other correspondence received from the Forest Service, the Board concludes that the Forest Service has violated the Permit, Va. Code § 62.1-44.5 and Regulations 9 VAC 25-31-50, 9 VAC 25-31-110.B and 9 VAC 25-260-170, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with Permit effluent limits and other conditions of the Permit, and by exceeding the geometric mean E. coli water quality standard, as described in paragraphs C(3) through C(13), above.

25. In order for the Job Corps to ensure compliance, DEQ staff and representatives of the Job Corps 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 pursuant to Va. Code §§ 62.1-44.15, the Board orders the USDA – Forest Service, Job Corps and the USDA – Forest Service, Job Corps 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 USDA – Forest Service, Job Corps for good cause shown by the USDA – Forest Service, Job Corps, 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, Warning Letter No. 2012-07-S-1002 dated August 1, 2012, Warning Letter No. 2012-10-S-1013 dated November 1, 2012, Warning Letter No. 2013-01-S-1007 dated January 24, 2013 and NOV No. W2013-03-S-0003 dated March 12, 2013. 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 USDA – Forest Service, Job Corps admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. The USDA – Forest Service, Job Corps 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 USDA – Forest Service, Job Corps 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 USDA – Forest Service, Job Corps 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 USDA – Forest Service, Job Corps 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 USDA – Forest Service, Job Corps shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The USDA – Forest Service, Job Corps 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 USDA – Forest Service, Job Corps.

11. This Order shall continue in effect until:

    a. The Director or his designee terminates the Order after the USDA – Forest Service, Job Corps has completed all of the requirements of the Order;

    b. The USDA – Forest Service, Job Corps 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 USDA – Forest Service, Job Corps.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the USDA – Forest Service, Job Corps 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 USDA – Forest Service, Job Corps 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 USDA – Forest Service, Job Corps certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind the USDA – Forest Service, Job Corps to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the USDA – Forest Service, Job Corps.

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 USDA – Forest Service, Job Corps voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18th day of February, 2014.

Allen J. Newman, P.E., Regional Director
Department of Environmental Quality

The United States Department of Agriculture – Forest Service, Flatwoods Job Corps Civilian Conservation Center voluntarily agrees to the issuance of this Order.

Date: 12/11/13 By: Lawrence Ferrell, Center Director
(Person) (Title)
United States Department of Agriculture – Forest Service,
Flatwoods Job Corps Civilian Conservation Center

Commonwealth of Virginia
City/County of Wise

The foregoing document was signed and acknowledged before me this 11th day of December, 2013, by Lawrence Ferrell who is Center Director of the United States Department of Agriculture – Forest Service, Flatwoods Job Corps Civilian Conservation Center on behalf of the United States Department of Agriculture – Forest Service, Flatwoods Job Corps Civilian Conservation Center.
(Title)

Kelly Elizabeth Tickles
Notary Public

258331
Registration No.

My commission expires: 10/31/2014

Notary seal:

KELLY ELIZABETH TICKLES
NOTARY PUBLIC
REG. #258331
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES OCTOBER 31, 2014

APPENDIX A
SCHEDULE OF COMPLIANCE

1. The USDA – Forest Service, Job Corps shall connect the Flatwoods Job Corps Civilian Conservation Center STP collection system to the Town of Coeburn's sewage collection system (the Route 72 Interceptor), with treatment of the wastewater achieved at the Coeburn-Norton-Wise Regional Wastewater Treatment Plant. This connection shall be completed within 90 days of notification of the USDA – Forest Service, Job Corps by DEQ of issuance of the Certificate to Operate (CTO) to the Town of Coeburn for operation of the Route 72 Interceptor.

2. If, due to unforeseen circumstances, the Route 72 Interceptor is not built and a CTO issued by May 1, 2015, the USDA – Forest Service, Job Corps shall submit an alternate plan to address violations at the Plant by July 1, 2015.

3. The USDA – Forest Service, Job Corps shall complete closure of the Flatwoods Job Corps Civilian Conservation Center STP, in accordance with the closure plan referenced in VPDES Permit No. VA0023027, Part I.D.6, within 180 days after the date that the connection noted in No. 1 above is completed.

4. The USDA – Forest Service, Job Corps shall notify the DEQ SWRO in writing within ten days following completion of connection (Item 1 above) and completion of closure (Item 3 above). Notifications shall be mailed to the attention of Ruby Scott, Compliance Auditor, 355-A Deadmore Street, Abingdon, VA 24210.