# *COMMONWEALTH of VIRGINIA*

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

David K. Paylor
Director


# STATE WATER CONTROL BOARD
# ENFORCEMENT ACTION - ORDER BY CONSENT
# ISSUED TO
# LOUISA COUNTY WATER AUTHORITY
# FOR
# ZION CROSSROADS WWTP
# VPDES Permit No. VA0090743

## 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 Louisa County Water Authority, regarding the Zion Crossroads WWTP, 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. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "DMR" means Discharge Monitoring Report.

5. "Facility" or "Plant" means the Zion Crossroads Wastewater Treatment Plant (WWTP) located at 9746 James Madison Highway in Louisa, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of Louisa County.

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

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

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

9. "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.

10. "Permit" means VPDES Permit No. VA0090743, issued under the State Water Control Law and the Regulation to Louisa County Water Authority.

11. "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.

12. "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.

13. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.

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. "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. LCWA operates the Plant in Louisa , Virginia. The Permit authorizes LCWA to discharge treated sewage and other municipal wastes from the Plant, to an impoundment of Camp Creek, in strict compliance with the terms and conditions of the Permit.

2. In submitting its DMRs, as required by the Permit, LCWA has reported exceedances of the discharge limitations contained in Part I.A.1 of the Permit as follows:
    a. Total Phosphorus ("TP")– October 2005, November 2005, March 2006, May 2006, August 2006, October 2006, February 2007, March 2007, May 2007, August 2007, September 2007, October 2007, November 2007, December 2007, January 2008, February 2008, November 2008, February 2009, March 2009, April 2009, May 2009, July 2009, August 2009, and January 2010 monitoring periods;
    b. Total Kjeldahl Nitrogen ("TKN") – November 2004, May 2005, January 2006, March 2006, April 2006, May 2006, June 2006, October 2006, November 2006, February 2007, March 2007, April 2007, May 2007, June 2007, January 2008, February 2008, March 2008, May 2008, June 2008, August 2008, October 2008, November 2008, December 2008, January 2009, February 2009, March 2009, May 2009, July 2009, August 2009, November 2009, January 2010, February 2010, March 2010, April 2010, and May 2010 monitoring periods;
    c. Dissolved Oxygen ("DO") – December 2005, June 2007, October 2008, May 2009 monitoring periods;
    d. Total Suspended Solids ("TSS") – November 2004, November 2005, March 2006, January 2007, March 2007, June 2007, January 2008, February 2008, March 2008, October 2008, December 2008, March 2009, May 2009, June 2009, July 2009, August 2009, and November 2009 monitoring periods;
    e. Carbonaceous Biochemical Oxygen Demand ("CBOD5") – April 2007, June 2007, February 2008, June 2008, August 2008, and December 2008 monitoring periods;
    f. E. Coli – March 2009 and July 2009 monitoring period.

3. In addition, after a review of LCWA's files, DEQ has noted the following additional violations of the Permit:
   a. Part I.B.2.c – Failing to report numerical value of data;
   b. Part II.C.1 – Failing to submit results of the monitoring required by the Permit not later than the 10th day of the month after monitoring takes place;
   c. Part II.I.3 – Failing to submit written reports of noncompliance containing information listed in Part II.I.2 of the Permit;
   d. Part I.D.1.a – Failing to submit the pretreatment industrial user survey within 180 days of the effective date of the Permit;
   e. Part I.D.2.c – Failing to submit an annual pretreatment report no later than January 31st of each year;
   f. Part I.C.1 – Failing to submit a proposed plan to achieve compliance with final limits for Total Copper and Total Recoverable Zinc within 90 days of the effective date of the Permit;
   g. Part II. Q – Failing to properly operate and maintain all facilities and systems of treatment which are installed and used by the permittee to achieve compliance with the conditions of the Permit stemming from a technical and laboratory inspection conducted by DEQ on May 20, 2009.

4. NRO issued Warning Letters and Notices of Violations for the previously cited violations as follows: WL No. W2008-12-N-1008, issued December 4, 2008; WL No. W2009-01-N-1001, issued January 9, 2009; WL No. W2009-03-N-1011, issued March 11, 2009; NOV No. 2009-05-N-0005, issued May 13, 2009; NOV No. 2009-06-N-0003, issued June 9, 2009; NOV No. 2009-07-N-0005, issued July 14, 2009; NOV No. 2009-08-N-0004, issued August 13, 2009; NOV No. 2009-09-N-0004, issued September 10, 2009; NOV No. 2009-10-N-0005, issued October 5, 2009; NOV No. 2009-11-N-0011, issued November 19, 2009; NOV No. 2009-12-N-0006, issued December 10, 2009; NOV No. 2010-01-N-0005, issued January 11, 2010; NOV No. 2010-05-N-0007, issued June 14, 2010; NOV No. 2010-06-N-0008, issued June 15, 2010; NOV No. 2010-07-N-0003, issued July 13, 2010; and NOV No. 2010-10-N-0006, issued November 16, 2010.

5. LCWA's DMRs indicate that it discharged treated wastewater from the Plant every day from January 1, 2004 through July 31, 2010.

6. 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."

7. 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.

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

9. The Department has issued no permits or certificates to LCWA for the Plant other than VPDES Permit No. VA0090743.

10. The impoundment of Camp Creek is surface water located wholly within the Commonwealth and is "state water" under State Water Control Law.

11. Based on the results of the May 20, 2009 inspection, the file review, and the DMRs submitted by LCWA, the Board concludes that LCWA has violated the Permit and Va. Code 62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(2) through C(3), above.

12. LCWA has submitted documentation that resolves the violation cited in C.3.c. above.

13. In order for LCWA to return to compliance, DEQ staff and representatives of LCWA 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, and upon consideration of Va. Code § 10.1-1186.2, the Board orders LCWA, and LCWA agrees to:

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

2. Pay a civil charge of $164,700.00 in settlement of the violations cited in this Order, to be paid as follows.

   a. LCWA shall pay $32,940.00 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 delivered to:

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

      LCWA shall include its Federal Identification Number 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).

   b. LCWA shall satisfy $131,760.00 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix B of this Order.

   c. The net project costs of the SEP to LCWA shall not be less than the amount set forth in Paragraph D.2.b. If it is, LCWA shall pay the remaining amount in accordance with Paragraph D.2.a 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.

d. By signing this Order LCWA certifies that it has not commenced performance of the SEP.

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

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

g. The Department has the sole discretion to:

   i. Authorize any alternate, equivalent SEP proposed by the Facility; and

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

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

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of LCWA for good cause shown by LCWA, 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, LCWA admits the jurisdictional allegations and agrees not to contest, but neither admits nor denies the findings of fact, and conclusions of law contained herein.

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

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

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, LCWA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 24th day of February, 2011.

Thomas A. Faha

Thomas A. Faha, Regional Director
Department of Environmental Quality

LCWA voluntarily agrees to the issuance of this Order.

Date: Nov. 30, 2010 By: _____, Chairman
(Person) (Title)
LCWA

Commonwealth of Virginia

City/County of Louisa

The foregoing document was signed and acknowledged before me this 30th day of November, 2010, by James Bogdan who is Chairman of LCWA, on behalf of the Authority.

Pamela S. Kincheloe
Notary Public

#154664
Registration No.

My commission expires: 01/31/11

Notary seal:

PAMELA S. KINCHELOE
Notary Public
Commonwealth of Virginia
154664
My Commission Expires Jan 31, 2011

# APPENDIX A
# SCHEDULE OF COMPLIANCE

LCWA shall:

1. Submit to DEQ, for review and approval by December 31, 2010, a plan of action and schedule to ensure consistent compliance with effluent limits and permit requirements. Upon its approval by DEQ, said plan and schedule shall become a part of and enforceable under the terms of this Order. Pending full implementation of said plan of action, LCWA shall operate the Plant in accordance with the approved Operations and Maintenance Manual, the Sewerage Collection and Treatment Regulations, and in accordance with generally accepted practices and procedures in the municipal wastewater industry.

2. By December 31, 2010, complete and certify repair or replacement of the UV intensity meters.

3. Submit monthly progress reports to DEQ outlining the projects and steps taken to achieve compliance as outlined in paragraph 1. Said monthly reports shall be due on the 10th of each month and submitted as an attachment with the monthly Discharge Monitoring Report.

4. Submit completed Chain of Custody, Certificate of Analysis, and bench sheets for all compliance samples with each monthly DMR to DEQ for the life of this Order.

5. Comply with the provisions of the Permit with respect to monitoring, recordkeeping, and reporting requirements with the exception of the increased monitoring and sampling frequencies as listed below:

| **Parameter** | **Monitoring Requirements** | |
|---|---|---|
| | *Frequency* | *Sampling Type* |
| TSS | 5D/W | 24H-C |
| E. Coli | 5D/W | Grab |
| TKN | 5D/W | 24H-C |
| Total Phosphorus | 1/W | 24H-C |
| $cBOD_5$ | 1/W | 24H-C |

6. Documents to be submitted to the Department, other than the civil charge payment described in Section D of this Order, shall be sent to:

   Department of Environmental Quality
   Northern Regional Office
   Attn: Enforcement
   13901 Crown Court
   Woodbridge, VA 22193

## APPENDIX B
## SUPPLEMENTAL ENVIRONMENTAL PROJECT

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

1. The SEP to be performed by LCWA is the design and construction of the facilities needed to provide effluent from current design flows treated at the Zion Crossroads Wastewater Treatment Facility to the adjacent Spring Creek Golf Course and residential development (Development) for reuse by the Development as irrigation water.

2. LCWA has agreed to undertake an evaluation of alternatives for providing the treated effluent to the Development with the objective of identifying the most cost-effective engineering design for the SEP. LCWA will complete the evaluation and submit the results of its alternatives evaluation and a preliminary engineering report for the SEP to the Department by April 1, 2011. The cost of the alternatives evaluation and preliminary engineering report shall be paid for from funds other than the $131,760 allocated to the SEP in Paragraph D.2 of this Order.

3. LCWA shall complete the SEP no later than December 31, 2015. Beginning July 1, 2011 and every six months thereafter until the SEP is completed, LCWA shall submit written progress reports to the Department.

4. Within 30 days following completion of the SEP, LCWA shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified by a responsible official of LWCA.

5. If the SEP has not or cannot be completed as described in the Order, LCWA shall notify DEQ in writing no later than 30 days after said determination. Such notification shall include:
    a. An alternate SEP proposal, or
    b. Payment of the amount specified in Paragraph D.2.b.

6. LCWA hereby consents to reasonable access by DEQ or its staff to property or documents under LCWA's control, for verifying progress or completion of the SEP.

7. LCWA shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 30 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by the CPA certification or certification from LCWA's Chief Financial Officer concerning the projected tax savings, grants, or first-year operation cost reductions or other efficiencies.