COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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STATE WATER CONTROL BOARD

ENFORCEMENT ACTION

ORDER BY CONSENT

ISSUED TO

LUNENBURG COUNTY
FOR
LUNENBURG COUNTY ADMINISTRATIVE COMPLEX STP

VPDES PERMIT No. VA0091391

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15 (8a), between the State Water Control Board and Lunenburg County, 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 meanings 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" means the Blue Ridge Regional Office of the DEQ, located in Lynchburg, Virginia.
3. "$CBOD_5$" means Carbonaceous Biochemical Oxygen Demand.
4. "County" or "Lunenburg" means Lunenburg County, a political subdivision of the Commonwealth of Virginia. Lunenburg County is a "person" within the meaning of Va. Code § 62.1-44.3.
5. Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality.
7. "DMR" means Discharge Monitoring Report.
8. "Facility", "Plant", or "STP" means the Lunenburg County Administrative Complex Sewage Treatment Plant, located at 11409 Courthouse Road in Lunenburg, Virginia, which treats and discharges treated sewage for the Administrative Complex.
9. "Notice of Violation" or "NOV" means a type of Notice of Violation under Va. Code § 62.1-44.15.
10. "O & M" means Operation and Maintenance.
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 number VA0091391; which was issued under the State Water Control Law to the County on February 9, 2009, and which expires on February 8, 2014.
13. "Regulation" means the VPDES Permit Regulation at 9 VAC 25-31-10 *et seq.*
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
15. "TKN" means Total Kjeldahl Nitrogen.
16. "TSS" means Total Suspended Solids.
17. "Va. Code" means the Code of Virginia (1950), as amended.

18. "VAC" means the Virginia Administrative Code.
19. "VPDES" means the Virginia Pollutant Discharge Elimination System.
20. "Warning Letter" or "WL" means a type of Notice of Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. The County owns and operates the Facility located in Lunenburg, Virginia. The Permit allows the County to discharge treated sewage from the Facility to a dry ditch which leads to an unnamed tributary (UT) of Couches Creek, in strict compliance with the terms and conditions of the Permit.
2. Couches Creek is located in the Chowan River, Dismal Swamp, & Albemarle Sound River Basin. The UT and receiving waters were not listed as impaired for designated uses in the 2008 Water Quality Assessment Integrated Report.
3. In submitting its DMRs, as required by the Permit, Lunenburg County has indicated that it has exceeded discharge limitations contained in Part I.A.1. of the Permit, for the following parameters and compliance periods: $CBOD_5$; January–July, September–December, 2007; April–May, July, and October–November, 2009. TKN; January, 2007–April, 2008, June - September, and November–December, 2008; January–July, 2009, and September–October, 2009, and January and March, 2010. TSS; January–May, 2007, October, 2007, June–July, 2008, November–December, 2008, March–May, 2009, July and September, 2009. The County was also cited for reporting deficiencies in May, June and July, 2007; March, June, September, November and December, 2008; March, May, June, July, September, and November, 2009.
4. BRRO issued the following Warning Letters and Notices of Violation for the Permit exceedances as follows: WL W2007-03-L-1017, issued March 15, 2007; WL W2007-04-L-1001, issued April 4, 2007; WL W2007-05-L-1003, issued May 8, 2007; NOV W2007-06-L-0003, issued June 7, 2007;

NOV W2007-07-L-0001, issued July 10, 2007; NOV W2007-08-L-0001, issued August 9, 2007; NOV W2007-09-L-0003, issued September 12, 2007, NOV W2007-10-L-0001, issued October 3, 2007; NOV W2007-10-L-0011, issued November 2, 2007, NOV W2007- 12-L-0002, issued December 5, 2007; NOV W2008-01-L-0002, issued January 10, 2008; NOV W2008-02-L-0003, issued February 11, 2008; NOV W2008-02-L-0007, issued March 3, 2008; NOV W2008-04-L-0005, issued April 8, 2008; NOV W2008-05-L-0003, issued May 7, 2008; NOV W2008-06-L-0003, issued June 5, 2008; NOV W2008-08-L-0005, issued August 6, 2008; NOV W2008-08-L-0010, issued September 8, 2008; NOV W2008-10-L-0004, issued October 6, 2008; NOV W2008-11-L-0007, issued November 6, 2008; NOV W2009-01-L-0008, issued January 9, 2009; NOV W2009-02-L-0007, issued February 12, 2009; NOV W2009- 03-L-0005, issued March 11, 2009; NOV W2009-03-L-0018, issued April 7, 2009; NOV W2009-05-L-0011, issued May 19, 2009; NOV W2009-06-L-0005; issued June 10, 2009; NOV W2009-07-L-0004, issued July 9, 2009; NOV W2009-07-L-0014, issued August 7, 2009; NOV W2009-09-L-0005, issued September 3, 2009; NOV W2009-11-L-0004, issued November 12, 2009; NOV W2009-12-L-0005, issued December 16, 2009, NOV W2009-12-L-0007, issued January 5, 2010; NOV W2010-03-L-0002, issued March 12, 2010, and NOV W2010-05-L-0006, issued May 13, 2010.

5. Department staff met with County officials, the County's environmental consultants, and a manufacturer's representative at the Administrative Complex on December 3, 2007, to discuss the chronic noncompliance and corrective measures to be taken. The County's contract operator had made numerous changes in the pump controls of the treatment system since startup in January of 2007, which improved operation but did not eliminate the Permit exceedances. During the on-site inspection it was discovered that one of the air lines was broken which supplied process air to the treatment unit, and this could be a possible cause for poor system

performance. The line was repaired the same day, and the County agreed to closely monitor operation of the unit to assure optimum performance. The manufacturer's representative made a recommendation to the County for proposed source control measures to regulate the janitorial chemicals utilized in the Administrative Complex.

6. The County's Permit exceedances continued into 2008 despite the operational changes and repairs made, along with the source controls instituted to protect the treatment unit. The County's environmental consultants met with Department staff in Lynchburg on December 19, 2008, to propose additional corrective action. The Department requested that a Plan of Action (POA) for the County be submitted by January 31, 2009, for Department review and approval. The POA was approved by the Department on May 19, 2009, which called for additional sampling and analysis to further characterize the influent wastestream. The Plan of Action was not carried out in 2009 due to the County being presented with an alternative by a new environmental consultant, i.e., the installation of a subsurface treatment system which would eliminate the County's surface discharge and its need for a VPDES permit.

7. The Department held follow-up meetings with the County on January 21 and April 1, 2010, and requested that the County submit a Corrective Action Plan (CAP) by May 31, 2010, to outline measures necessary to achieve compliance.

8. The County's operating logs indicate that it discharged treated wastewater from the STP every day from January 1, 2007 through March 31, 2010.

9. a. 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."

10. 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.

11. Va. Code § 62.1-44.15(5a) states that a VPDES Permit is a "certificate" under the statue.

12. The Department has issued no permits or certificates to the County other than VPDES Permit No. VA0091391.

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

14. Based on the results of the DMRs submitted on February 8, March 9, April 10, May 9, June 20, July 10, August 9, September 10, October 10, November 9, and December 10, 2007; January 8, February 8, March 10, April 10, May 8, June 10, July 9, August 8, September 10, October 10, November 7, and December 9, 2008; January 7, February 10, March 11, April 10, May 8, June 10, July 10, August 10, September 9, October 5, November 9, December 8, 2009, and February 9, 2010, the Board concludes that Lunenburg County has violated VPDES Permit No. VA0091391, Va. Code § 62.1-44.5, and 9 VAC 25-31-50 by discharging treated sewage from the STP while concurrently failing to comply with the conditions of the Permit, as described in paragraph C.3., above.

15. In order for the County to return to compliance, Department staff and representatives of the County 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 the County of Lunenburg, and the County agrees to perform the actions described in Appendix A and Appendix B of this Order.

TMF 8-20-10

SECTION E: Administrative Provisions

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

4. Lunenburg County 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. Lunenburg County 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 Lunenburg County 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. Lunenburg County 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 other such occurrence. The County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Lunenburg County 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 listed above, which the County 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 Lunenburg County. Nevertheless, the County 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. Lunenburg County 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 the County.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Lunenburg County 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 Lunenburg County and approved by the Department pursuant to this Order are incorporated into this Order. Any noncompliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Lunenburg County 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 County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the County.

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, Lunenburg County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 27th day of September, 2010.

Robert J. Weld, Regional Director
Blue Ridge Regional Office
Department of Environmental Quality

Lunenburg County voluntarily agrees to the issuance of this Order.

Date: 5-27-10 By: T. Wayne Hoover, _____
T. Wayne Hoover Chairman, Lunenburg County Board of Supervisors

Commonwealth of Virginia

County of Lunenburg

The foregoing document was signed and acknowledged before me this 27th day

of May, 2010, by T. Wayne Hoover, who is Chairman, Board of

Supervisors of Lunenburg County on behalf of the County.

Tracy M. Gee
Notary Public

7232083
Registration No.

My commission expires: 7-31-2012.

Notary seal:

TRACY M. GEE
NOTARY PUBLIC
REG. #7232083
MY COMMISSION EXPIRES
7-31-12
COMMONWEALTH OF VIRGINIA

APPENDIX A

SCHEDULE OF COMPLIANCE

1. Lunenburg County shall submit to the Department, for review and approval, by **June 30, 2010**, a detailed Corrective Action Plan (CAP) which outlines the County's intent of exercising one of the following options:

   A. Modification of the MicroFAST® 3.0 treatment system, based on the investigative findings of the County's environmental consultant, which will ensure that the County achieves and maintains consistent compliance with all terms and conditions of VPDES Permit No. VA0091391; or

   B. Installation of a subsurface treatment system to eliminate surface discharge and the requirement for a VPDES Permit. The County shall furnish complete documentation of Virginia Department of Health (VDH) review, comment, and approval of the proposed system.

2. Said CAP shall also include a schedule of implementation for either option 2.A. or 2.B. chosen above. Upon Department approval, said CAP and schedule shall become an enforceable part of this Order.

3. Lunenburg County shall complete corrective action in accordance with the CAP and schedule approved by the Department as expeditiously as possible, but in no case later than **September 30, 2010**.

4. If the CAP is not completed by September 30, 2010, the County may request an extension of time to carry out the CAP. The Department may choose to approve such an extension, but approval shall be conditioned on the County ceasing all discharges from the STP and entering into a contract with a commercial septage hauler to transport all wastewater generated by the County's Administrative Complex to a municipal POTW for disposal from October 1, 2010, until completion of the CAP under the approved schedule extension, and application by the County for a release from the pump-and haul requirement. The County shall retain and make available for inspection all manifests and invoices associated with hauling and disposal of wastewater from the Administrative Complex.

5. Lunenburg County shall notify the Department upon final completion of the CAP, according to the approved schedule, after which time the County, with the Department's approval shall, if option 1.A. above is chosen, recommence discharge from the modified MicroFAST®

treatment system. The County shall demonstrate its ability to consistently comply with all terms, conditions, and effluent limitations contained in VPDES Permit No. VA0091391 by consistently meeting all those terms, conditions, and effluent limitations during a consecutive six (6) month Demonstration of Success period. The Demonstration of Success period shall be completed no later than September 30, 2011.

6. Lunenburg County shall submit to the Department quarterly Progress Reports on or before, **July 10, October 10, 2010; January 10, April 10, July 10, and October 10, 2011**, for the preceding quarter.

7. Lunenburg County shall submit a final compliance report documenting completion of corrective action, in accordance with the CAP, within 180 days of completion of corrective action, but in no case later than **September 30, 2011**.

8. If option 2.A. above is exercised, it shall be the express responsibility of the County, upon inspection of the modifications to the treatment system and subsequent issuance of a Certificate to Operate (CTO) by the Department's Office of Wastewater Engineering (OWE), to retain a certified Wastewater Operator as the Operator in Responsible Charge for the Facility. The Operator shall be certified by the Commonwealth of Virginia, and possess and maintain at a minimum a Class IV Wastewater Operator license for the period.

9. It shall be the sole responsibility of the County to submit all DMRs as required by the Facility's discharge Permit to the Department, as well as Letters of Explanation (LOEs) to address any and all violations of the Permit, and any additional documentation requested by the Department in accordance with Part II.D. of the subject Permit.

10. It shall be the sole responsibility of the County to perform required maintenance and assume all costs associated with preventative, routine, and emergency maintenance activities.

11. Submit all reports and correspondence required by this Order to:

G. Marvin Booth, III

Regional Enforcement Representative

Department of Environmental Quality

7705 Timberlake Rd.

Lynchburg, VA 24502

APPENDIX B

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

8-30-10

From the date of execution of this Order until completion of the approved CAP in accordance with paragraph 3 of Appendix A, but in no event later than September 30, ~~2011~~ 2010, Lunenburg County shall monitor and limit the discharge from the Lunenburg County Administrative Complex in accordance with VPDES Permit Number VA0091391 except as specified below.

These requirements shall be construed in light of the Regulation.

Parameter Description	Parameter Limits					Monitoring Requirements	
	Quantity Average	Quantity Maximum	Concentration Minimum	Concentration Average	Concentration Maximum	Sample Frequency	Sample Type
$CBOD_5$	NA	NA	NA	NA	63 mg/l	1/M	Grab
TKN	NA	NA	NA	NA	81 mg/l	1/M	Grab
TSS	NA	NA	NA	NA	56 mg/l	1/M	Grab

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