COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTH CENTRAL REGIONAL OFFICE
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L. Preston Bryant, Jr
Secretary of Natural Resources

David K. Paylor
Director

Thomas L. Henderson
Regional Director

STATE WATER CONTROL BOARD

ENFORCEMENT ACTION

CONSENT SPECIAL ORDER

ISSUED TO

Montgomery Maxted
Permit Number VA0062316

SECTION A: Purpose

This is a Special Order by Consent issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a), between the State Water Control Board and Montgomery Maxted 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 meanings 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 citizen board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "DEQ Regional Director" or "Regional Director" means the Regional Director of the South Central Office of DEQ.
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.

6. "Order" means this document, also known as a Consent Special Order.
7. "Owner" means Mr. Montgomery Maxted.
8. "Permit" means VPDES Permit number VA0062316, issued to Montgomery Maxted.
9. "SCRO" means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
10. "STP" or "Facility" means the Pine Gove Park Wastewater Treatment Plant.
11. "VPDES" means the Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Facts and Conclusions of Law

1. Mr. Montgomery Maxted owns and operates the Facility, located in Mecklenburg County, Virginia. The Facility is the subject to the Permit, which allows Mr. Maxted to discharge treated wastewater into an unnamed tributary of Lick Branch of the Roanoke/Yadkin River Basin in strict compliance with the terms, limitations, and requirements delineated therein.
2. Mr. Maxted purchased the Facility in June 2004 from the previous owner, Mr. David Wilson, and inherited numerous operational and compliance issues not addressed during Mr. Wilson's ownership.
3. Based on the discharge monitoring reports ("DMR") submitted by Mr. Maxted, the Department issued the following Notices of Violation ("NOVs"), and Warning Letters ("WL"): W2004-09-L-0010, W2004-10-L-0010, W2004-12-L-0005, W2005-01-L-0003, W2005-02-L-0008, W2005-03-L-0004, W2005-04-L-0002, W2005-05-L-0004, W2005-08-L-0001, W2006-03-L-1001, W2006-04-L-1003, W2006-078-L-0003, W2006-12-L-1001, W2007-03-L-1012, W2007-04-L-1011, W2007-05-L-0003, W2007-06-L-0005, W2007-07-L-0002, and W2007-10-L-0005. The violations noted are as follows:
   a. Failure to maintain ammonia below the monthly average and maximum Permit effluent limit.

b. Failure to maintain BOD_5 below the weekly average and maximum Permit effluent limit.

c. Failure to maintain DO above the weekly average and minimum Permit effluent limit.

d. Failure to maintain TSS below the weekly average and maximum Permit effluent limit.

e. Unpermitted discharge reaching state waters, failure to notify the Department of discharge within 24 hours, and submit follow-up letter within 5 days.

4. Va. Code § 62.1-44.5.A prohibits, *inter alia*, the discharge of "sewage, industrial wastes, other wastes, or any noxious or deleterious substances" to State waters except in compliance with a permit issued by the Board.

4. Va. Code § 62.1-44.3 defines state waters as "all water, on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands."

5. Mr. Maxted met with Department staff on June 25, 2007 to discuss the compliance and operational issues at the Facility. A follow-up meeting was held with staff on November 5, 2007 to update conditions at the STP, and discuss viable alternatives for achieving compliance.

6. Mr. Maxted has spent significant sums of money and made continuous good faith attempts to ensure compliance with Permit conditions, but those efforts have not achieved their goal. With the Permit's recent re-issuance, additional requirements to control ammonia discharges have been added. These new requirements will require either a substantial upgrade of the STP or elimination of discharges from the STP. It is anticipated that any of these options will not only ensure compliance with ammonia limitations, but also will address the compliance issues noted above.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15(8a), orders Mr. Maxted, and Mr. Maxted consents, to perform the actions contained in Appendix A and Appendix B of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Maxted, for good cause shown by Mr. Maxted or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified by the NOVs and WLs cited herein. 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 that occur after this Order is issued; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect enforcement actions by other state, local, or federal regulatory authorities, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Mr. Maxted admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Maxted 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 waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to 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.
5. Failure by Mr. Maxted 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.
6. 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.

7. Mr. Maxted 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. Mr. Maxted shall demonstrate that such circumstances resulting in noncompliance were beyond the control of Mr. Maxted and not due to a lack of good faith or diligence. Mr. Maxted 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 notify the Regional Director verbally within twenty-four (24) hours and in writing within five (5) business days of learning of any condition listed above, which Mr. Maxted 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.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns jointly and severally.

9. This Order shall become effective upon execution by the Director, or his designee, and Mr. Maxted.

10. This Order shall continue in effect until:

    a. Mr. Maxted petitions the Regional Director to terminate the Order after it has completed all requirements of the 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 Mr. Maxted.

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

11. By its signature below, Mr. Maxted consents to the issuance of this Order.

And it is so ORDERED this 10th day of April, 2008.

Thomas L. Henderson, Director
South Central Regional Office
Department of Environmental Quality

Date: 2/23/08

By: Montgomery Maxted
Montgomery Maxted, Owner, Pine Grove Park STP

Commonwealth of Virginia
City/County of Mecklenburg
The foregoing document was signed and acknowledged before me this 23rd day of February, 2008, by Montgomery Maxted, Owner, Pine Grove Park STP.

Notary Public

My commission expires:

Andrea Dodson
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #270183
My Commission Expires
April 30, 2011

APPENDIX A

Schedule of Compliance

1. Within **90 days** of the effective date of this Order, Mr. Maxted shall submit to the Department for review and approval a Plan of Action (POA) for coming into compliance with State Water Control Law. The POA shall address either (A) Upgrades to the STP to comply with all Permit conditions, or (B) Installation of approved on-site treatment which effectively eliminates discharges from the STP in a manner approved by the Virginia Department of Health.

2. No later than **December 31, 2009**, Mr. Maxted shall:

   A. Complete approved upgrades to the current treatment system; or

   B. Complete the installation of an approved on-site treatment system.

3. During the interim period covered by this Order, Mr. Maxted shall operate the STP in a workmanlike manner to ensure the best quality effluent of which the STP is capable.

4. Pine Grove shall submit quarterly progress reports describing efforts made during the reporting period to comply with the requirements of the Permit and this Order. Reports are to be submitted on or before January 10, April 10, July 10, and October 10 for the preceding quarter.

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APPENDIX B

Interim discharge limitations:

During the period beginning with the effective date of this Order discharges from the STP shall be limited and monitored in accordance with VPDES Permit VA0062316, except as specified below:

	Weekly Average	Monthly Average
Ammonia, as N	6.0 ug/l	6.0 ug/L
BOD_5 –		
Loading	.77 kg/d	.51 kg/d
Concentration	68 mg/l	45.0 mg/l
TSS –		
Loading	.77 kg/d	.51 kg/d
Concentration	68 mg/l	45.0 mg/l

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