COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION
A SPECIAL ORDER BY CONSENT
ISSUED TO:

Nelson County Service Authority

Wintergreen Mountain STP
(VPDES Permit No. VA0031011)
and the
Nelson County Regional STP
(VPDES Permit No. VA0089729)

SECTION A: Purpose

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and 8(d) between the State Water Control Board and the Nelson County Service Authority (NCSA) to resolve certain violations of the State Water Control Law occurring at the Wintergreen Mountain and Nelson County Regional sewage treatment plants.

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 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.

5. "Order" means this document, also known as a Consent Special Order.

6. "STP" means sewage treatment plant.

7. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

8. "Permit" means Virginia Pollutant Discharge Elimination System Permit.

9. "NCSA" or "Nelson County" means the Nelson County (Virginia) Service Authority.

10. "VRO" or "Regional Office" means the Valley Regional Office of the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.

11. "Wintergreen STP" means the Wintergreen Mountain STP, as covered under VPDES Permit No. VA0031011, which became effective January 1, 2004 and expires December 31, 2008.

12. "Regional STP" means the Nelson County Regional STP, as covered under VPDES Permit No. VA0089729, which became effective June 6, 2003 and expires June 5, 2008.

13. "MDG" mean millions of gallons per day.

14. "NOV" means Notice of Violation.

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

16. "DMR" means Discharge Monitoring Report.

17. " P.E.R." means preliminary engineering report.

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

19. "PC Sludge Report" means Pollutant Concentration Sludge Report.

20. "SMP" means Sludge Management Plan.

SECTION C: Findings of Fact and Conclusions of Law

Nelson County Service Authority – Regional STP

1. NCSA owns and operates the Regional STP which is located 1.5 miles west of the intersection of US 29 and SR 56 near the Town of Colleen in Nelson County and serves approximately 100 customers. The Regional STP/Facility is the subject of VPDES Permit VA0089729 which allows the Facility to discharge 0.22 MGD of treated wastewater to the Black Creek in the James (Upper) River Basin.

2. DEQ issued NOV No. W2005-05-V-0005 on May 4, 2005, to NCSA for failure to submit its 2nd annual Sludge Report (2004) for the Regional STP, which was due on February 19, 2005.

3. On May 26, 2005, DEQ met with Mr. Timothy E. Castillo, Executive Director of NCSA to discuss the violations and provide technical assistance in filling out the required reports. DEQ water compliance staff provided Mr. Castillo with proper forms and explained programmatic requirements in completing Sludge Reports.

4. DEQ issued NOV No. W2005-07-V-0017 on July 19, 2005, to NCSA for continued failure to submit its 2nd annual Sludge Report (2004) for the Regional STP, which was due on February 19, 2005.

5. On July 21, 2005, DEQ staff met with Mr. Castillo to review the partially completed Sludge Reports for the Regional STP and provided additional technical assistance. Mr. Castillo was also informed that a prior 1st annual Sludge Report (2003) for the Regional STP was deemed incomplete and unacceptable after DEQ file review.

6. On September 28, 2005, DEQ met with Mr. Castillo to discuss reports which he represented to be completed 1st (2003) and 2nd (2004) annual Sludge Reports for the Regional STP. The 1/5-year Water Quality Standards sampling report which was submitted during the meeting was deemed complete.

7. DEQ compliance staff, after subsequent review of all the 1st and 2nd annual Sludge Reports for the Regional STP, determined that all the Reports were still incomplete, containing faulty or improperly recorded data, and in part lacking now-unrecoverable data.

8. DEQ issued NOV No. W2005-10-V-0006 on October 17, 2005, to NCSA for continued failure to submit complete Sludge Reports for the STP and provided a detailed explanation as to what data were either omitted or incorrectly entered.

9. The Regional STP Permit requirements and 9 VAC 25-31-50 requires the timely submittal of required reports. Part I.G.21 of the Regional STP's Permit requires

NCSA to "provide the results of all monitoring performed in accordance with Part I.A, and information on management practices, land application sites … and appropriate certifications not later than February 19 of each year…."

10. 9 VAC 25-31-50 and 9 VAC 25-31-190 require timely and complete submittal of reports to DEQ in accordance with permit requirements.

11. DEQ issued Warning Letter W2006-02-V-1005 on February 2, 2006, to NCSA for improperly reporting data on its DMR for November 2005.

12. DEQ issued Warning Letter W2006-06-V-1036 on June 8, 2006, to NCSA for failure to document compliance with pathogen and vector requirements of the Permit Part I.A.2b&c and 9 VAC 31-710.B. and 720.B respectively. In addition, the Warning Letter cited the failure to perform soil monitoring prior to sludge reapplication on Field 5.

13. DEQ issued Warning Letter W2006-10-V-1011 on October 3, 2006, to NCSA for:
    a. failure to respond to an April 14, 2006, technical and laboratory inspection report;
    b. failure to submit the O&M Manual due June 16, 2006; and,
    c. failure to submit the SMP by June 16, 2006.

14. DEQ issued NOV No. W2006-12-V-0007 on December 15, 2006, to NCSA for:
    a. CBOD effluent violations in October 2006;
    b. failure to respond to an April 14, 2006, technical and laboratory inspection report;
    c. failure to submit the O&M Manual due June 16, 2006; and,
    d. failure to submit the SMP by June 16, 2006.

15. DEQ issued NOV No. W2007-02-V-0010 on February 6, 2007, to NCSA for CBOD effluent violations in November 2006.

16. DEQ issued NOV No. W2007-04-V-0008 on April 10, 2007, to NCSA for failure to submit the 4th Year Sludge Annual Report due February 19, 2007.

17. DEQ issued NOV No. W2007-05-V-0008 on May 7, 2007, to NCSA for failure to submit the 4th Year Sludge Annual Report due February 19, 2007.

18. DEQ issued NOV No. W2007-06-V-0004 on June 8, 2007, to NCSA for failure to submit the 4th Year Sludge Annual Report due February 19, 2007.

Nelson County Service Authority – Wintergreen STP

19. NCSA owns and operates the Wintergreen STP which is located at 143 Headwaters Lane in Nelson County and serves the resort community with approximately 2000 sewer customers. The Wintergreen STP/Facility is the subject of VPDES Permit VA0031011 which allows the Facility to discharge 0.30 MGD of treated wastewater to Pond Hollow in the James (Middle) River Basin.

20. DEQ issued NOV No. W2005-05-V-0015 on May 10, 2005, to NCSA for:

    a. total recoverable copper effluent violations in February 2005;
    b. failure to report E. coli monitoring data for March 2005;
    c. failure to submit its 2nd (2004) annual Sludge Report, due February 19, 2005; and
    d. failure to submit its 1/5-year Water Quality Standards Monitoring Report for the Wintergreen STP, which was due February 10, 2005.

21. DEQ issued NOV No. W2005-07-V-0020 on July 21, 2005, to NCSA for:
    a. failure to timely submit its 2nd (2004) annual Sludge Report, due February 19, 2005;
    b. failure to submit its 1/5-year Water Quality Standards Monitoring Report for the Wintergreen STP, which was due February 10, 2005; and
    c. submittal of the May 2005 DMR without an original signature.

22. On July 21, 2005, DEQ met with Mr. Castillo to discuss the ongoing violations at the STP. Mr. Castillo addressed the copper exceedence and stated his belief that measuring total dissolved copper and zinc levels would yield more realistic results than the current permit-mandated total recoverable measurement levels. DEQ used enforcement discretion in allowing NCSA an opportunity to collect measurement data comparing total recoverable data with total dissolved data for both copper and zinc for several months before considering formal enforcement options. During the July 21, 2005, meeting DEQ reviewed with Mr. Castillo the partially completed Sludge Reports for the Wintergreen STP and provided additional technical assistance.

23. DEQ issued NOV No. W2005-08-V-0009 on August 15, 2005, and NOV No. W2005-09-V-0005 on September 14, 2005, to NCSA for failure to submit its 1/5-year Water Quality Standards Monitoring Report for the Wintergreen STP. Completed Sludge Reports for the STP facility had not yet been submitted by this date.

24. On September 28, 2005, DEQ again met with Mr. Castillo, where Mr. Castillo provided what he represented to be the completed 2nd (2004) annual Sludge

Report for the Wintergreen STP. Mr. Castillo also submitted the 1/5-year Water Quality Standards Report for the Wintergreen STP facility. The 1/5-year Report was deemed complete.

25. DEQ compliance staff, after subsequent review of the 2nd Annual Sludge Report for the Wintergreen STP, determined that the Sludge Report was still incomplete, containing faulty or improperly recorded data, and in part lacking now-unrecoverable data. As a result, DEQ issued NOVs to NCSA informing the Service Authority that the Sludge Report for the STP was not acceptable and provided a detailed explanation as to what data were either omitted or incorrectly entered.

26. DEQ issued NOV No. W2005-10-V-0005 on October 17, 2005, to NCSA for total recoverable zinc and total recoverable copper effluent limitation violations in August 2005 and failure to submit a complete 2004 PC Sludge Annual Report.

27. DEQ issued NOV No. W2005-11-V-0003 on November 9, 2005, to NCSA for total recoverable copper effluent limitation violations in September 2005.

28. On November 10, 2005, DEQ met with Mr. Castillo to discuss the current violations at the Wintergreen STP and to explain that because the violations included unrecoverable data associated with the incomplete Sludge Reports, a formal enforcement action, including the payment of a civil charge, would necessarily follow.

29. DEQ issued NOV No. W2005-12-V-0008 on December 21, 2005, to NCSA for total recoverable copper effluent limitation violations in October 2005. The NOV also cited the submittal of a DMR with improperly reported data for October 2005.

30. On January 20, 2006, DEQ met with Mr. Castillo to discuss Wintergreen's ongoing violations and corrective measures to prevent future violations. Prior to this meeting, Mr. Castillo had submitted to DEQ a final report comparing total recoverable data for metals (zinc, nickel, and copper) with dissolved effluent measurements gathered during 2005. DEQ concluded from its analysis of NCSA's metal data comparisons that measuring dissolved metals levels did not appear to be more accurate than measuring total recoverable metals.

31. Following the January 2006 meeting with DEQ, NCSA attempted to control the copper and zinc limits exceedances by altering the effluent pH through chemical addition. However, the Wintergreen DMRs submitted subsequent to beginning the pH adjustment showed continued and chronic failure to meet permitted limits

for copper in December 2005 and January, February, September, and October of 2006, and for zinc in December 2005 and March, April, June, July, August, and October of 2006. NCSA was informed that significant corrective action, including the requirement for a facility upgrade to comply with permitted limits, would be necessary to address the continued permit violations occurring at Wintergreen.

32. DEQ issued NOV No. W2006-06-V-0005 on June 9, 2006, to NCSA for:

    a. Soil monitoring was not performed prior to sludge reapplication to Field #2, as required by Part I.A.4a and Part I.G.1 of the Wintergreen VPDES permit;
    b. NCSA provided only one composite sample for fecal coliform where seven samples are required under Part I.A.3b of the Wintergreen permit; and
    c. the phosphate loading rate on Field #2 was reported as applied at 190 lbs/acre, exceeding the permitted limit of 120 lbs/acre as set out in Part I.G.5 and Attachment C of the Wintergreen permit, because soil tests indicated that total phosphorus was greater than 55 ppm.

33. DEQ issued NOV No. W2006-11-V-0008 on November 6, 2006, to NCSA for Total Copper effluent violations in September 2006.

34. There were Total Copper and Total Zinc effluent limitation violations which occurred in October 2006 which were not cited on any enforcement documents.

35. DEQ issued NOV No. W2007-04-V-0003 on April 10, 2007, to NCSA for Total Zinc and Total Copper effluent violations in February 2007.

36. DEQ issued NOV No. W2007-05-V-0010 on May 7, 2007, to NCSA for Total Copper effluent violations in March 2007 and for failure to submit the 4th Year Sludge Annual Report due February 19, 2007.

37. DEQ issued NOV No. W2007-06-V-0001 on June 8, 2007, to NCSA for Total Copper effluent violations in April 2007.

38. On June 28, 2007, DEQ again met with NCSA to discuss the continuing violations at both the Regional STP and the Wintergreen STP. At the June 28, 2007, meeting NCSA provided DEQ with outstanding reports and copies of the required O&M Manual and SMP. NCSA also provided a status of their corrective actions to address the ongoing copper and zinc effluent violations at the Wintergreen plant.

39. Subsequent to the June 28, 2007, meeting NCSA provided DEQ with metals sampling data along with hardness data to determine if metals limitations could be

either eliminated from the Wintergreen permit or dramatically relaxed.

40. On July 16, 2007, NCSA submitted a permit modification request to remove the metals limitations from the Wintergreen permit and replace them with a hardness minimum limitation. The Permit modification is to go to Public Notice on August 16, 2007. This Permit modification obviates the need for significant plant upgrades with a schedule of compliance to meet metals effluent limitations.

41. The violations cited in the NOVs for both the Wintergreen and Regional STP facilities have been consolidated into a single Order due to the similarity of the violations and the fact that both facilities are operated by the same entity.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders NCSA, and NCSA agrees, to perform the actions described in Appendix A and Appendix B of this Order.

2. **Within 30 days** of the effective date of this Order, NCSA shall pay a civil charge of **$18,100** in settlement of the alleged violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

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

   NCSA shall also include its federal identification number (FIN) with the check, certified check, money order, or cashier's check.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of NCSA, for good cause shown by NCSA, or on its own motion after notice and opportunity to be heard.

2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent

remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local 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, NCSA admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.

4. NCSA 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. NCSA declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, 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 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.

6. Failure by NCSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar 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. NCSA shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. NCSA must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. NCSA shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

   a. The reasons for the delay or noncompliance;

   b. The projected duration of 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 Director of the Regional Office in writing within 24 hours of learning of any condition listed above, which NCSA intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of 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 NCSA. Notwithstanding the foregoing, NCSA 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. NCSA petitions the Regional Director to terminate the Order after it has completed all requirements of the Order. The Director's determination that NCSA has satisfied all the requirements of the Order is a case decision within the meaning of the Virginia Administrative Process Act; or

b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days written notice to NCSA.

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

12. The undersigned representative of NCSA 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 NCSA to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of NCSA.

13. By its signature below, the NCSA voluntarily agrees to the issuance of this Order.

13. By its [illegible] below, the NCSA voluntarily agrees to the issuance of this Order.

And [illegible] DERED this 7th day of December, 2007.

Amy Thatcher Owens,
Regional Director, Valley Regional Office
Department of Environmental Quality

The terms and condi[illegible] the Order are voluntarily accepted by NCSA:

Date: 10/10/07 By: [illegible]

Title: Executive Director

Commonwealth of [illegible] City/County of Nelson

The foregoing instr[illegible] acknowledged before me this 10 day of October, 2007, by Timothy E. Castillo, who is Executive Director of NCSA, on behalf of NCSA.
(name) (title)

3/31/2010
Date my commis[illegible] expires

Linda C. Quick
Notary Public
N.R. # 156686

LINDA C. QUICK
Notary Public
Commonwealth of Virginia
156686
My Commission Expires Mar 31, 2010

1. On June 28, 2007, NCSA provided DEQ with applicable outstanding reports and copies of the required O&M Manual and SMP for the Regional and/or Wintergreen STP. NCSA shall respond to comments on these documents **within 30 days** of receipt of written comments.

2. **By December 17, 2007**, NCSA shall submit to DEQ for review and approval an updated O&M Manual for the Wintergreen Facility incorporating any new processes related to meeting the hardness limitations.

3. **Within 30 days** of issuance of the Wintergreen Permit modification, NCSA shall comply with the Permit limitations.

4. **By February 19, 2008**, NCSA shall submit to DEQ its 5th year Annual Sludge Report.

GENERAL REQUIREMENTS

5. NCSA shall submit quarterly progress reports to DEQ, with the first report being due **October 10, 2007**. Subsequent Progress Reports will be due by **January 10**, **April 10**, **July 10** and **October 10,** along with the Facility's Discharge Monitoring Report until the cancellation of this Order. The quarterly progress reports shall contain:

   a. a summary of all work completed since the previous progress report in accordance with this Order;
   b. a projection of the work to be completed during the upcoming quarterly period in accordance with this Order; and
   c. a statement regarding any anticipated problems in complying with this Order.

6. No later than **14 days** following a date identified in the above schedule of compliance NCSA shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

APPENDIX B

NELSON COUNTY SERVICE AUTHORITY
WINTERGREEN STP
Interim Effluent Limits and Monitoring Requirements

During the period beginning with the date of entry of this Consent Special Order and lasting until 30 days after the issuance of the Permit modification, NCSA shall limit and monitor the discharge from outfall 001 at the Wintergreen STP in accordance with the Permit except as specified below.

EFFLUENT CHARACTERISTICS			DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS	
	Monthly Average		Weekly Average		Min.	Max.	*Frequency*	Sample Type
	mg/l	kg/d	mg/l	kg/d				
Total Recoverable Copper	NL	NL	NL	NL	NA	NA	1/M	8 HC
Total Recoverable Zinc	NL	NL	NL	NL	NA	NA	1/M	8 HC

NA = Not Applicable

NL = No Limit, Monitoring Required