COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
VALLEY REGIONAL OFFICE
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STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
HARRISONBURG-ROCKINGHAM REGIONAL SEWER AUTHORITY
FOR
NORTH RIVER WWTF
VPDES Permit No. VA0060640

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 Harrisonburg-Rockingham Regional Sewer Authority, regarding the North River WWTF, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and/or 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. "$CBOD_5$" mean carbonaceous biochemical oxygen demand.

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. "DMR" means Discharge Monitoring Report.

6. "Facility" or "Plant" means the North River Wastewater Treatment Facility located in Mount Crawford, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of the City of Harrisonburg, the Towns of Bridgewater, Dayton, Mount Crawford and the surrounding areas of Rockingham County.

7. "HRRSA" means the Harrisonburg-Rockingham Regional Sewer Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* HRRSA is a "person" within the meaning of Va. Code § 62.1-44.3.

8. "MLSS" means mixed liquor suspended solids.

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

10. "O&M" means operations 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 No. VA0060640, which was issued under the State Water Control Law and the Regulation to HRRSA on September 1, 2006 and which expires on August 31, 2011.

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. "TSS" means total suspended solids.

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

20. "VAC" means the Virginia Administrative Code.

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

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

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

24. "WWTF" means wastewater treatment facility.

SECTION C: Findings of Fact and Conclusions of Law

1. HRRSA owns and operates the Facility serving the City of Harrisonburg, the Towns of Bridgewater, Dayton, and Mount Crawford and surrounding areas in Rockingham County. The Permit allows HRRSA to discharge treated sewage and other municipal wastes from the Facility, to the North River, in strict compliance with the terms and conditions of the Permit.

2. North River is located in the Shenandoah River subbasin, Potomac River basin. The North River is listed in DEQ's 303(d) report as impaired for not supporting aquatic life and not supporting recreational use due to E. coli. The sources of the impairment are agriculture, non-point source discharges and wildlife other than waterfowl.

   Cooks Creek is also listed in DEQ's 303(d) report as impaired for not supporting aquatic life and recreational use due to E. coli. The sources of the impairment are agriculture, non-point source discharges and wildlife other than waterfowl.

3. The design capacity of the Facility has been rated and approved as 16.0 MGD.

4. HRRSA is presently constructing an upgraded and expanded sewage treatment plant. The construction is required for the Facility to comply with nutrient limits in the VPDES

permit which go into effect on September 1, 2010. Upon completion of construction and issuance of the CTO, the Facility will have an expanded capacity of 22.0 MGD.

5. On January 13, 2010, HRRSA reported to DEQ that it had experienced two separate unauthorized discharges of sewage. This report was received in a timely manner, in accordance with its permit requirements. One of the unauthorized discharges occurred at a manhole adjacent to Cooks Creek approximately 250 feet upstream of Cooks Creek's confluence with the North River. The second discharge occurred at a junction box at the Facility. HRRSA indicated that the unauthorized discharges occurred while it was attempting to tie-in a new grit chamber.

6. On January 14, 2010, DEQ staff conducted a site inspection/investigation at the Facility and observed evidence of the unauthorized discharge from the grit chamber which entered the North River. At the time of the inspection, HRRSA had the overflow situation under control.

7. In submitting its DMRs, as required by the Permit, HRRSA has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for D.O. minimum for the month of August 2009, for $CBOD_5$ for the month of December 2009, and for $CBOD_5$, TSS and chlorine, for the month of January 2010. HRRSA does not believe the August 2009 D.O. minimum result was accurate or representative of the effluent quality at the time due to potential lab error. HRRSA attributed the December 2009 $CBOD_5$ exceedances to the prolonged high flows due to inflow and infiltration and unusually high rainfall/precipitation in December 2009. HRRSA indicated that it believed the January 2010 $CBOD_5$ and TSS exceedances were related to the combination of higher than normal MLSS concentrations due to operational issues related to start-up of the new gravity belt sludge thickening process and higher than normal hydraulic loading (influent flows). During this time, the Facility experienced an extended period of unusually high flows due to heavy rainfall and snow melt. The chlorine violation was attributed to a break in the line feeding sodium hypochlorite to the chlorine contact tank The line break was repaired and no further corrective action is necessary.

8. On February 16, 2010, DEQ issued Warning Letter number W2010-02-V-1011 to HRRSA for $CBOD_5$ loading and concentration maximum violations in December 2009. HRRSA also experienced unauthorized discharges on December 9, 2009 and December 29, 2009. HRRSA attributed these unauthorized discharges to the region's extraordinary wet winter weather, in which over 31 inches of precipitation (total includes combined rainfall and snowfall) was recorded in December 2009.

9. On March 10, 2010, VRO issued Notice of Violation number W2010-03-V-0003 to HRRSA for an unauthorized discharge of approximately 650,000 gallons of raw sewage to Cooks Creek from a manhole upstream of the Facility and an unauthorized discharge of approximately 18,000 gallons of wastewater to the North River from a junction box within the treatment plant's grounds on January 13, 2010. The NOV cited $CBOD_5$ loading maximum and TSS loading maximum effluent limitations that occurred in January 2010. In addition, there was a D.O. concentration minimum violation in August

2009, a chlorine instantaneous technical minimum concentration effluent violation in January 2010 and two unauthorized discharges in March 2010 (March 13 and March 16, 2010) that were not included in any enforcement documents.

10. On March 24, 2010, Department staff met with representatives of HRRSA to discuss the NOV's violations, the problems that led to the violations and corrective actions needed to address the problems.

11. By letters dated January 26, 2010, March 9, 2010 and April 22, 2010, HRRSA submitted to DEQ information about the unauthorized discharges. HRRSA attributed the January 13, 2010, unauthorized discharges to a design error in the construction plans for the new grit chambers. The design error resulted in the new grit chambers nos. 5 & 6 being constructed with a higher water surface elevation than the existing grit chambers nos. 3 & 4 so that wastewater overflowed the existing, interconnected open channel system when the new grit chambers were placed into service.

12. HRRSA has taken action to address the design error through the construction of a new telescoping valve and additional piping to work around the elevation differences which led to the overflows.

13. 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."

14. 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.

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

16. The Department has issued no permits or certificates to HRRSA other than VPDES Permit No. VA0060640.

17. The North River and Cooks Creek are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.

18. Based on the results of the March 24, 2010, meeting, DEQ's inspection, DMRs and a file review, the Board concludes that HRRSA has violated the Permit and Va. Code § 62.1-44.5 and 9 VAC 9 VAC 25-31-50, by discharging untreated sewage and municipal wastes from the Facility and treated sewage and municipal wastes while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(5), (8) and (9) above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders HRRSA, and HRRSA agrees to:

1. Pay a civil charge of **$10,500** within 30 days of the effective date of the Order in settlement of the violations cited in 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

HRRSA shall include its Federal Employer Identification Number (FEIN) (54-0897932) 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).

SECTION E: Administrative Provisions

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

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

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

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, HRRSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10th day of December, 2010.

Amy T. Owens, Regional Director
Department of Environmental Quality

City of HRRSA voluntarily agrees to the issuance of this Order.

Date: 8-11-2010 By: Sharon B Foley, EXECUTIVE DIRECTOR
(Person) (Title)
Harrisonburg-Rockingham Regional Sewer Authority

Commonwealth of Virginia
City/County of ROCKINGHAM

The foregoing document was signed and acknowledged before me this 11 day of AUGUST, 2010, by SHARON G FOLEY who is EXECUTIVE DIRECTOR Harrisonburg-Rockingham Regional Sewer Authority on behalf of the Harrisonburg-Rockingham Regional Sewer Authority.

Kelly Showalter
Notary Public

7139599
Registration No.

My commission expires: 02/28/11

Notary seal:

KELLY R. SHOWALTER
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7139599
My Commission Expires Feb. 28, 2011