



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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Secretary of Natural Resources

David K. Paylor  
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Regional Director

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### STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO THE COUNTY OF POWHATAN Dutoy Creek WWTP VPDES Permit No. VA0090727

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and the County of Powhatan, for the purpose of resolving certain alleged violations of environmental law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning 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. "PRO" means the Piedmont Regional Office of the Department, located in Glen Allen, Virginia.
6. "Order" means this document, also known as a Consent Special Order.

7. "County" means the County of Powhatan, Virginia, a political subdivision of the Commonwealth of Virginia.
8. "Dutoy Creek WWTP" or "Facility" means the County's Dutoy Creek Wastewater Treatment Plant, which is located at 2040 Anderson Hwy., off Rt. 60, Powhatan County, Virginia.
9. "Permit" means VPDES Permit No. VA0090727, which was issued to Powhatan County for the Dutoy Creek WWTP on January 23, 2002, and expires on January 23, 2007.
10. "NOV" means Notice of Violation which is a document citing alleged violations of the Permit issued by the Department to the County.
11. "O&M" means operations and maintenance.
12. "DMR" means discharge monitoring report.
13. "SBR" means sequencing batch reactor.
14. "TKN" means Total Kjeldahl Nitrogen.
15. "TSS" means Total Suspended Solids.
16. "CBOD5" means Carbonaceous Biochemical Oxygen Demand.
17. "DO" means dissolved oxygen.
18. "Cu" means total recoverable copper.
19. "Zn" means total recoverable zinc.

**SECTION C: Findings of Fact and Conclusions of Law**

1. The County owns and operates the Dutoy Creek WWTP which was constructed to provide wastewater treatment service to the new Powhatan High School and local community. This Facility is the subject of the Permit, which allows the Dutoy Creek WWTP to discharge treated wastewater into an unnamed tributary of Dutoy Creek in compliance with terms, limitations and requirements outlined in the Permit.
  2. On April 8, 2004, the Department issued a NOV to the County citing the following violations of the Dutoy Creek WWTP Permit: exceeding the effluent limitations for TSS for the months of October through December 2003, for Cu and Zn for the months of October 2003 through February 2004, and for CBOD5
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in the month of November 2003. In addition, the County exceeded the effluent limitation for DO in the month of December 2003.

3. On April 22, 2004, the Department met with the County to discuss resolution of the violations cited in the April 8, 2004, NOV. At this meeting, the County asserted that the Dutoy Creek WWTP had difficulty in providing consistent treatment to the small, variable flow volumes the Facility received. In addition, the County suggested that the excessive metals may enter the WWTP from a variety of sources: the County reported that they had tested and found high background levels of Zn in the water wells that supply the High School; that Cu may be leaching from the High School's plumbing system; and both Cu and Zn may be discharged into the WWTP from materials used at the High School such as floor wax. The County agreed to study and respond to the Department regarding all possible sources of the Cu and Zn and to provide the Department with a plan and schedule by May 21, 2004, to locate the sources of Cu and Zn in the system with the ultimate goal of achieving compliance with the Permit.
  4. On May 21, 2004, the Department received correspondence from the County stating that it intended, among other things, to review the MSDS (Material Safety Data Sheets) information on supplies used by the Powhatan High School, which is the main contributor to the flow entering the Dutoy Creek WWTP; to add a corrosive inhibitor to the water system that provides water to the new Powhatan High School to minimize leaching of metals from the copper piping in the school; to utilize "clean sampling" techniques when collecting certain effluent discharge samples from the Dutoy Creek WWTP for analysis; and to more clearly identify the source(s) of Zn and Cu that the Dutoy Creek WWTP is receiving.
  5. On October 20, 2004, the Department issued a NOV to the County citing the following exceedences of the Dutoy Creek WWTP Permit: exceeding effluent limitations for Cu and Zn from March 2004 through August 2004; TSS effluent limitations in March 2004, CBOD5 in March and August 2004, and for TKN in April and May 2004. The NOV did not include the citations for the exceedences of the effluent limitations for Cu and Zn in the month of September 2004.
  6. On November 17, 2004, the Department met with the County in response to the above NOV. At the meeting, the County proposed to further identify and reduce the sources of Cu and Zn in the effluent by performing additional tests on the water wells and distribution system, and to perform 'clean' sampling for metals. The County also said that it would look at collecting data to support re-designation of the stream to Tier I waters for Permit modification.
  7. During the months of October 2004 through the month of February 2005, the County again failed to consistently meet effluent limitations required in the Permit for TSS, TKN, CBOD5, DO, Cu and/or Zn. The County also failed to report pH in the month of February 2005, which the County asserts was a clerical error.
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8. On July 21, 2005, the Department issued a NOV to the County for exceeding effluent limitations for TSS, TKN, CBOD5, DO, Cu, and/or Zn as reported on the DMRs for the months of September 2004 through May 2005.
  9. On March 31, 2006, the Department issued a NOV to the County for exceeding effluent limitations for Cu, Zn and/or TKN as reported on the DMRs for the months of September 2005 through February 2006.
  10. On June 5, 2006, the Department issued a NOV to the County for exceeding effluent limitations for Cu, Zn, and/or TKN as reported on the DMRs for the months of March and April 2006.
  11. On September 14, 2006, the Department issued a NOV to the County for exceeding effluent limitations for Cu, Zn, TKN, CBOD5 and/or DO as reported on the DMRs for the months of May, June and July 2006.
  12. On November 14, 2006, the Department issued a NOV to the County for exceeding effluent limitations for Cu and Zn as reported on the DMRs for the months of August and September 2006.
  13. On April 13, 2007, the Department issued a NOV to the County for exceeding effluent limitations for Cu, Zn, TKN, CBOD, TSS, and/or DO as reported on the DMRs for the months of October 2006 through February 2007.
  14. On June 19, 2007 the Department met with the County to discuss terms for bringing the WWTP back into compliance. A primary cause for continued problems is the fact that the facility remains significantly under loaded due to slower than expected growth in the area. High natural concentrations of Zn in the current water supply also contribute to the continued non-compliance with metals limits. To address these issues the County proposes to change the water supply in that area by purchasing water from Chesterfield County. It is believed that the new water source will spur growth resulting in increased flows to the facility, and the new water supply will have significantly lower Zn concentrations.
  15. Appendix A of this Order establishes an agreed upon schedule for the County to complete transformation to the new water supply and to study the effects of the change. During the study period the County will also test process changes designed to achieve consistent compliance. At the end of the study period a report will be submitted to the Department indicating whether or not the changes made have been successful. If the changes have not been fully successful, the report will identify additional measures that will be taken by the County and a proposed implementation schedule. Such additional measures may include outfall relocation and/or possible reuse of the wastewater for irrigation or industrial applications.
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16. Another cause of noncompliance cited by the County on several occasions has been the possible illegal dumping of toxic wastewater into the sewage collection system. Appendix A, therefore, requires the County to secure all manholes within the Dutoy Creek system by the end of the year.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders the County, and the County agrees, to perform the actions described in Appendix A of this Order and comply with the interim limits described in the Appendix B of this Order. In addition, the Board orders the County, and the County voluntarily agrees, to pay a civil charge of **\$17,700** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for the County. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

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

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the County, for good cause shown by the County, or on its own motion after notice and opportunity to be heard.
  2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the NOV's issued on April 8, 2004, October 20, 2004, July 21, 2005 and March 31, 2006, June 5, 2006, September 14, 2006, November 14, 2006 and April 13, 2007 as listed above in Section C. 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 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 authority, 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, the County admits the jurisdictional allegations, but does not admit the factual findings and conclusions of law contained herein.
  4. The County consents to venue in the Powhatan County Circuit Court for any civil action taken to enforce the terms of this Order.
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5. The County 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 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 enforce this Order.
6. Failure by the 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. The 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 such other 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. The County shall notify the Department 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 so notify the Regional Director within 5 business days of learning of any condition 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.

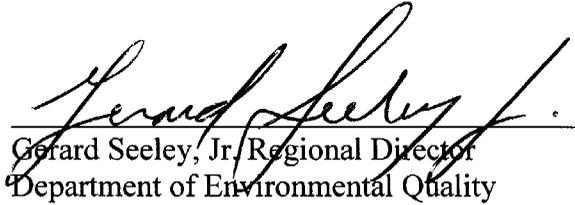
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
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10. This Order shall become effective upon execution by both the Director or his designee and the County. Notwithstanding the foregoing, 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. The 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 notice to the County.

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

12. By its signature below, the County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of September<sup>27</sup>, 2007.

  
Gerard Seeley, Jr./Regional Director  
Department of Environmental Quality

The County voluntarily agrees to the issuance of this Order.

By:   
Date: 7/30/07

Commonwealth of Virginia

City/County of POWHATAN

The foregoing document was signed and acknowledged before me this 30 day of

July, 2007, by Carolyn Cias, who is  
(name)

County Administrator of the County of Powhatan, on behalf of the County of Powhatan.  
(title)

Shirley J. Yoiss  
Notary Public  
ID # 955777

My commission expires: December 31, 2009.

## APPENDIX A

The County shall:

1. **By December 31, 2007**, provide a plan and schedule for securing manhole covers within the Dutoy Creek WWTP sewage collection system. Upon approval, the plan and schedule shall become incorporated herein as an enforceable part of this Order.
2. **By December 31, 2007**, complete the switchover to the Chesterfield County potable water supply for all Powhatan County potable water supply users who discharge to the WWTP.
3. **By December 31, 2007**, submit to the Department an approvable Professional Engineer (PE) certified Study Plan and schedule, for evaluating the effects of changing the water supply and for testing any additional measures that may be needed to come into compliance with permit effluent limits.
4. **By no later than June 1, 2008**, implement the approved Study Plan.
5. **By March 1, 2009**, submit a final report of the study results that indicates whether measures taken to that point have been successful in achieving compliance with permit limits. If the measures have not been successful in achieving full compliance with permit limits, the report will propose a PE Certified plan and schedule for planning and implementing additional measures that are necessary to come into full compliance. The plan and schedule shall be subject to review and approval by DEQ staff. Upon approval, the plan and schedule shall become incorporated herein as an enforceable part of this Order.
6. Discharges shall be limited and monitored in accordance with the Permit, except as specified in **Appendix B**.
7. **Submit** quarterly progress reports on progress in complying with this Order on the tenth (10<sup>th</sup>) of January, April, July, and October of each year for as long as this Order remains in effect. **The first report is due October 10, 2007. The reports shall include a statement indicating whether or not the County is in compliance with the approved plans and schedules pursuant to this Order, and if not, the reports shall include reasons for the noncompliance, and the steps taken to come back into compliance.**

**Pursuant to this Order** all communications regarding this Order and its requirements shall be addressed as follows:

Cynthia Akers  
Department of Environmental Quality  
Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060

The County shall confirm, in writing, completion of the Order requirements to the above address **within five (5) days of completion.**

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**APPENDIX B**

**A. INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. During the period beginning with the effective date of this Order, and lasting until completion of the approved corrective action plan, as envisioned by Appendix A, the County is authorized to discharge from outfall serial number 001 in accordance with the Permit, except that with respect to TKN, DO Copper and Zinc, the limits described below shall apply.

Such discharges shall be limited and monitored by the permittee as specified below.

These requirements shall be construed in light of the Board's Permit Regulation 9 VAC 25-31-10 et seq.

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS		
	MONTHLY AVERAGE	WEEKLY AVG.	MINIMUM	MAXIMUM	FREQUENCY	SAMPLE TYPE	
Total Kjeldahl Nitrogen (TKN)	17.0 mg/L	23.0 mg/L	NA	NA	1/Month	Grab	
Dissolved Oxygen	NA	NA	6.0 mg/l	NA	1/DAY	Grab	
Total Recoverable Copper	40 ug/L	40 ug/L	NA	NA	1/Month	Grab	
Total Recoverable Zinc	227 ug/L	227 ug/L	NA	NA	1/Month	Grab	

"NA" means not applicable.