



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTH CENTRAL REGIONAL OFFICE

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Preston Bryant
Secretary of Natural Resources

David K. Paylor
Director

Thomas L. Henderson
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

A SPECIAL ORDER BY CONSENT

ISSUED TO

**The Town of Blackstone
Permit Number VA0025194**

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 Town of Blackstone for the purpose of resolving certain violations of environmental law 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. "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. “Town or Blackstone” means the Town of Blackstone located in Nottoway County, Virginia.
7. “Facility” means the Wastewater Treatment Plant.
8. “SCRO” means the South Central Regional Office of the DEQ, located in Lynchburg, Virginia.
9. “VPDES” means the Virginia Pollutant Discharge Elimination System.
10. “Permit” means VPDES Permit number VA0025194 issued to the Town.

SECTION C: Findings of Facts and Conclusions of Law

1. Va. Code § 62.1-44.5 and 9 Virginia Administrative Code (“VAC”) 25-31-50 provide, among other things, that except in compliance with a permit issued from the Board it is unlawful to discharge into state waters “sewage, industrial wastes, other wastes, or any noxious or deleterious substances[.]”
2. 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.”
3. The Facility is subject to the Permit, which authorizes Blackstone to discharge treated wastewater into an unnamed tributary of Hurricane Branch, Chowan and Dismal Swamp River Basin, in strict compliance with the terms, limitations, and requirements delineated therein.
4. The unnamed tributary to Hurricane Branch is impaired for the general standard – benthic for 1.12 miles below the Facility, and is reported as a Category 5 stream on the 303(d) Total Maximum Daily Load (“TMDL”) Priority List, as required by the Clean Water Act 33 U.S.C. § 1313(d), to the Environmental Protection Agency. The unnamed tributary was first reported on the TMDL Priority list in 1994, and the impairment is attributed to erosion and sedimentation and the Facility discharge.
5. On August 29, 2005, the DEQ conducted an inspection of the Facility and based on the inspection issued Notice of Violation (“NOV”), number

W2005-09-L-0008, on September 21, 2005, for the following:

- a. Blackstone failed to properly operate the chlorine (“Cl₂”) disinfection system in accordance with section 3.22 of the Facility’s Operation and Maintenance Manual (“OMM”), thus contravening Part I.E.4 of the Permit;
 - b. Blackstone failed to properly operate the sulfur dioxide (“SO₂”) de-chlorinating system in accordance with section 3.22 of the Facility’s OMM, thus contravening Part I.E.4 of the Permit;
 - c. Blackstone modified the Cl₂ disinfection system without notice to DEQ contravening Part II.J.2 of the Permit;
 - d. Blackstone modified the SO₂ de-chlorinating system without notice to DEQ contravening Part II.J.1.b of the Permit;
 - e. Blackstone pumped wastewater from the secondary clarifier to the SO₂ de-chlorinating system, thus bypassing the Cl₂ disinfection system in contravention of Part II.U.3 of the Permit; and
 - f. Blackstone, by bypassing the Cl₂ disinfection, discharged approximately 8,000 to 10,000 gallons per day of non-disinfected wastewater to state waters in contravention of Va. Code § 62.1-44.5, 9 VAC 25-31-50, and Part II.F of the Permit. According to Blackstone, the unpermitted discharge began approximately in early June 2005, and the unpermitted discharge ceased on the date of the DEQ inspection, August 29, 2005.
6. The DEQ received a written response to the NOV on September 22, 2005. In the letter Blackstone stated that the Cl₂ and SO₂ treatment systems were modified because of “the failure rate of the chlorine and sulfur dioxide induction motors...and operators were directed to identify more cost effective means of operating the system.”

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted in Va. Code § 62.1-44.15(8a) and (8d) orders Blackstone, and Blackstone consents, to perform the actions contained in Appendix A this Order. In addition, the Board orders, and Blackstone consents, to pay a civil charge of \$14,400.00 in settlement of violations cited herein.

1. \$3,600.00 of the civil charge shall be paid within 30 days of the effective date of this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification number for Blackstone. 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 10150
Richmond, Virginia 23240

2. \$10,800.00 of the civil charge shall be satisfied upon completion by Blackstone of a Supplemental Environmental Project ("SEP") pursuant to Va. Code § 10.1-1186.2 and as described in Appendix A of this Order.
3. The Department has the sole discretion to:
 - a. authorize any alternate SEP proposed by Blackstone; and
 - b. determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
4. If the Department determines that the SEP, or alternate SEP, has not been completed in a satisfactory manner, the Department shall notify Blackstone of such determination in writing. Within 30 days of such notification Blackstone shall pay the amount specified in Paragraph 2 of Section D in accordance with the procedures set forth in Paragraph 1 of Section D.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Blackstone, for good cause shown by Blackstone, or on its own motion

after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified 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, Blackstone admits to the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Blackstone 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. Blackstone 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.
6. Failure by Blackstone 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.
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. Blackstone 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 occurrence. Blackstone shall demonstrate that such circumstances resulting in noncompliance were beyond the control of Blackstone and not due to a lack of good faith or diligence. Blackstone 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 so notify the Regional Director within 24 hours of learning of any condition listed above, which Blackstone 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.

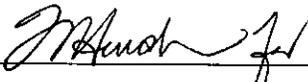
9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns jointly and severally.
10. This Order shall become effective upon execution by the Director, or his designee, and Blackstone.
11. This Order shall continue in effect until:
 - a. Blackstone petitions 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 Blackstone.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Blackstone 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, Blackstone consents to the issuance of this Order.

And it is so ORDERED this 2nd day of June, 2006.



David K. Paylor, Director
Department of Environmental Quality

Blackstone consents to the issuance of this Order.

Date: 4/10/06 By: 

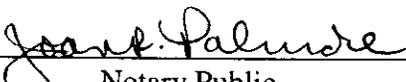
J. Larry Palmore, Town Manager, Town of Blackstone

Commonwealth of Virginia

City/County of Nottoway

The foregoing document was signed and acknowledged before me this 10th day

of April, 2006, by J. Larry Palmore, Town Manager, Town of Blackstone.



Notary Public

My commission expires: October 31, 2009

Appendix A

1. The SEP to be performed by Blackstone is a pollution reduction SEP in that it will prevent pollutants from entering the environment in the event of a power outage. Blackstone shall install back-up generators in accordance with the Town's February 6, 2006, letter to DEQ which is hereby incorporated by reference and enforceable under the terms of this Order.
2. The SEP shall be completed by September 1, 2006.
3. Blackstone certifies it has not commenced performance of the SEP prior to the identification of the violations cited in this Order and the approval of the SEP by the Department.
4. The net cost of the SEP to Blackstone shall not be less than \$10,800. In the event that the final net cost of the SEP is less than this amount, Blackstone shall pay the remainder of the amount in accordance with Paragraph D. 1 of this Order to the Commonwealth of Virginia, unless otherwise agreed to by the Department. Net costs shall mean the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.
5. Blackstone acknowledges that it is solely responsible for completion of the SEP project. Any transfer of funds, tasks, or otherwise by Blackstone to a third party, shall not relieve Blackstone of its responsibility to complete the SEP as contained in this Order.
6. Blackstone shall provide the Department with written verification of the SEP by providing purchasing invoices to the Department within 30 days of acquiring the generators. DEQ will inspect the Facility after the completion date to ensure the generators have been installed as presented in the February 6, 2006, letter to DEQ.
7. In the event that Blackstone publicizes the SEP or the results of the SEP, Blackstone shall state in a prominent manner that the project is part of a settlement for an enforcement action.