

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
CHESAPEAKE PUBLIC SCHOOLS
Permit No. VA0024562**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Chesapeake Public Schools, for resolving certain 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. “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. “Chesapeake” means Chesapeake Public Schools.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Regulations” means 9 VAC 25-31-10 *et seq.* – Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
9. “Permit” means VPDES Permit No. VA0024562.

SECTION C: Findings of Fact and Conclusions of Law

1. Chesapeake owns a wastewater treatment plant serving the Southeastern Elementary School, the Hickory High School, the Hickory Middle School, and the Hickory Elementary School (hereinafter referred to as the Hickory Schools WWTP). The Hickory Schools WWTP is the subject of the Permit, which became effective July 24, 2001 and expires on July 24, 2006. The Permit authorizes the discharge of treated wastewater from the Hickory Schools WWTP to Cooper's Ditch, which leads to the Chesapeake/Albemarle Canal.
2. Part I.A of the Permit establishes effluent limits and monitoring requirements. Section 9 VAC 25-31-190.A of the Regulations and Part II.L of the Permit state: "The permittee must comply with all conditions of the permit."
3. Part I.D.3 of the Permit states: "Non-compliance with the Operations and Maintenance (O&M) manual shall be deemed a violation of the Permit." Part II.Q of the Permit states: "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, which are installed or used by the permittee to achieve compliance with the conditions of this permit."
4. Part I. C of the Permit establishes a schedule of compliance, which requires Hickory Schools WWTP to submit quarterly progress reports in accordance with the schedule provided in the Permit. Part II.C.2 of the Permit states: "Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved or specified by the Department."
5. TRO records document 19 Permit effluent limit exceedances between August 2000 and March 2002 at the Hickory Schools WWTP. These effluent limit exceedances include parameters such as total suspended solids, chlorine, carbonaceous biological oxygen demand, and/or total kjeldahl nitrogen.
6. TRO records document three operational deficiencies at the Hickory Schools WWTP including failure to comply with the O&M manual and two unsatisfactory ratings on a technical and laboratory inspection. During a November 30, 2000 inspection of the Hickory Schools WWTP, TRO staff documented poor maintenance and housekeeping practices and sampling errors. On January 31, 2001, February 2, 2001, and February 5, 2001, DEQ staff observed solids in the chlorine tank, the dechlorination tank, and the receiving waters, which is not in compliance with Hickory Schools WWTP's O&M Manual.
7. TRO records document two monitoring/submission deficiencies between October 2000 and February 2001 at the Hickory Schools WWTP. These deficiencies include failure to submit a quarterly progress report and failure to provide a monitoring result on a DMR. Chesapeake submitted the quarterly report and corrected DMR soon after DEQ notified them of these violations.
8. In response to these violations, TRO issued Chesapeake two Warning Letters dated January 25, 2001 and February 6, 2001, and seven Notices of Violation dated February 23, 2001, June 8, 2001, August 6, 2001, August 31, 2001, October 22, 2001, and March 22, 2002.
9. In April 2001, Hampton Roads Sanitation District assumed operational control of Hickory Schools WWTP. On August 29, 2001, TRO staff inspected the Hickory Schools WWTP. The inspection revealed that the Hickory Schools WWTP was in

compliance with the Permit and the level of treatment had improved since the previous inspection.

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 Chesapeake, and Chesapeake agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Chesapeake, and Chesapeake voluntarily agrees to perform the following actions:

1. Chesapeake shall pay a civil charge of \$5,670 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include Chesapeake's Federal Identification Number. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

2. Chesapeake shall, within six months of sanitary sewer availability, obtain approvals and connect Hickory Schools WWTP to the sewer main. When connection to the sewer main is completed, Hickory Schools WWTP shall cease all discharges to state waters and cap all outfalls. Notification shall be provided to Frank Daniel, Tidewater Regional Director at:

Department of Environmental Quality
5636 Southern Blvd.
Virginia Beach, VA 23462

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Chesapeake, for good cause shown by Chesapeake, 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 Warning Letters issued to Chesapeake by DEQ on January 25, 2001 and February 6, 2001, and Notices of Violation issued on February 23, 2001, June 8, 2001, August 6, 2001, August 31, 2001, October 22, 2001, and March 22, 2002. 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; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. This order is made by agreement and with the consent of the parties, and does not constitute a finding, adjudication or admission or violation of any federal, state or local law, rule, or regulation or any allegations contained herein.
4. Chesapeake consents to venue in the Circuit Court of the City of Chesapeake for any civil action taken to enforce the terms of this Order.
5. Chesapeake 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 Chesapeake 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. Chesapeake 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. Chesapeake shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Chesapeake 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 above, which the parties intend 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 Chesapeake. Notwithstanding the foregoing, Chesapeake agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until Chesapeake 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.
12. By its signature below, Chesapeake voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of _____, 2003.

 Robert G. Burnley, Director
 Department of Environmental Quality

Chesapeake voluntarily agrees to the issuance of this Order.

By: _____

Date: _____

Commonwealth of Virginia
 City/County of Chesapeake

The foregoing document was signed and acknowledged before me this ___ day of _____, 2003, by _____, who is
 (Name)

_____ of Chesapeake.
 (Title)

 Notary Public

My commission expires: _____.