



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

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Robert G. Burniey
Director

Gerard Seeley, Jr.
Piedmont Regional Director

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
THE TOWN OF KILMARNOCK**

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 Kilmarnock, 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 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 DEQ, located in Glen Allen, Virginia.
6. "Order" means this document, also known as a Consent Special Order.

7. “Kilmarnock” means the Town of Kilmarnock, located in Lancaster County, Virginia.
8. “WWTP” means Kilmarnock’s wastewater treatment plant located near SR 608, Lancaster County, Virginia.
9. “Permit” means VPDES Permit No. VA0020788, which was issued June 7, 1999, and expired on June 7, 2004.
10. “NOV” means Notice of Violation. A document citing alleged violations of the Permit issued by the Department to the Town.
11. “TKN” means Total Kjeldahl Nitrogen which is a measure of nutrients.

SECTION C: Findings of Fact and Conclusions of Law

1. Kilmarnock owns and operates the WWTP. This WWTP is the subject of the Permit, which allows Kilmarnock to discharge treated wastewater into an unnamed tributary of Indian Creek in strict compliance with terms, limitations and requirements outlined in the Permit.
2. A review of Department files revealed that Kilmarnock has failed to comply with certain requirements contained in the Permit.
3. On February 11, 2004 and on March 15, 2004, the Department issued NOVs to Kilmarnock for failure to submit an application for reissuance of the Permit within 180 days prior to the Permit expiration date (Part II.M of the Permit), for failure to comply with the Permit’s 4 year schedule to meet the final effluent limitations for dissolved copper and dissolved zinc (Part I.B.4 of the Permit); and for failure to meet the final effluent limitations for dissolved copper and dissolved zinc for several months, and for TKN in the month of January 2004 (Part I.A of the Permit).
4. On June 7, 2004, the Permit expired. Since that time the Town has allowed the WWTP to discharge, without authorization from the Board, in violation of §62.1-44.5 of the Code.
5. On June 29, 2004, a meeting was held between the Town and DEQ staff to discuss resolution of violations cited in the March 15, 2004, NOV.
6. At the June 29, 2004 meeting, Kilmarnock agreed to provide DEQ with a plan and schedule to bring the Town into compliance with the Permit.
7. The Town of Kilmarnock responded to this request by letter dated August 27, 2004.

8. The Department determined the permit application for reissuance of the Permit was complete on October 21, 2004.

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 Kilmarnock, and Kilmarnock agrees, to perform the actions described in Appendix A and comply with the interim limits described in Appendix B of this Order. In addition, the Board orders Kilmarnock, and Kilmarnock voluntarily agrees, to pay a civil charge of \$5,320 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 Kilmarnock. 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 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Kilmarnock, for good cause shown by Kilmarnock, 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 February 11, 2004 and March 15, 2004 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, Kilmarnock admits the jurisdictional allegations, the factual findings and conclusions of law contained herein.
4. Kilmarnock 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. Kilmarnock 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 Kilmarnock 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. Kilmarnock 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. Kilmarnock shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kilmarnock 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 7 days of learning of any condition above, which the Town 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 Kilmarnock. Notwithstanding the foregoing, Kilmarnock 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. Kilmarnock 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 Kilmarnock.

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

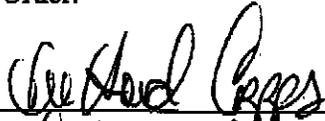
12. By its signature below, Kilmarnock voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of December 3, 2004.



Robert G. Burnley, Director
Department of Environmental Quality

Kilmarnock voluntarily agrees to the issuance of this Order.

By: 
Date: October 28, 2004

Commonwealth of Virginia

City/County of Lancaster

The foregoing document was signed and acknowledged before me this 28th day of

October, 2004, by LEE HOOD CAPPAS, who is
(name)

TOWN MANAGER of Kilmarnock, on behalf of Kilmarnock.
(title)

Jacqueline L. Blencowe
Notary Public

My commission expires: 5/31/05

APPENDIX A

Kilmarnock shall:

1. **By February 1, 2005**, submit to DEQ for review and approval a plan and schedule, together with any design specifications, necessary for the Town to come into and maintain consistent compliance with the effluent limits for TKN, total recoverable copper and total recoverable zinc as required by the re-issued VPDES Permit No. VA0020788 (re-issued Permit).
2. **Upon approval**, implement the above plan and schedule to achieve consistent compliance with the re-issued Permit. The approved plan and schedule shall become a part of this Appendix A and be incorporated in this Order.
3. Immediately comply with the requirements of Appendix B of this Order.
4. **Comply by no later than twenty-four months of the effective date of the re-issued VPDES Permit No. VA0020788**, with the final effluent limits for TKN, Cu and Zn.
5. Submit quarterly progress reports on progress in complying with this Order on the tenth (10th) of January, April, July, and October of each year for as long as this Order remains in effect. The **first report** is due **January 10, 2005**. The reports shall include a statement indicating whether or not Kilmarnock is in compliance with this schedule, and if not, the reports shall include reasons for the noncompliance, and the steps taken to come back into compliance.
6. Unless otherwise specified in this Order, all submissions shall be sent to:

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

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 paragraph 1 of Appendix A, but no later than December 1, 2006, the Town is authorized to discharge from outfall serial number 001 in accordance with the Permit, except that with respect to TKN, 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	
	3.00 mg/l	5.68 kg/d	4.50 mg/l	8.52 kg/d	NA	NA			
Total Kjeldahl Nitrogen (TKN)					NA	NA	3 days/wk	8-HC	
Total Recoverable Copper	16 ug/l		16 ug/l		NA	NA	1/Month	Grab	
Total Recoverable Zinc	150 ug/l		150 ug/l		NA	NA	1/Month	Grab	

"NA" means not applicable.

"NL" means no limitation is established. Monitoring and reporting however, are required.