

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

**SPECIAL ORDER BY CONSENT**

**ISSUED TO**

**THE TOWN OF MT. JACKSON**

*(VPDES Permit No. VA0026441)*

**SECTION A: Purpose**

This is a Special Order by consent issued under the authority of Va. Code § 62.1-44.15(8a) and 8(d) between the State Water Control Board and the Town of Mt. Jackson, Virginia, to resolve certain violations of environmental laws 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 citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "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 DEQ.

5. "VRO" means the Valley Regional Office of the DEQ.
6. "VPDES" means the Virginia Pollutant Discharge Elimination System.
7. "the Permit" means VPDES Permit No. VA0026441 issued to the Town of Mt. Jackson on December 31, 2001.
8. "VPDES Permit Regulation " means 9 VAC 25-31-10 *et seq.*
9. "Order" means this document, also known as a Consent Special Order.
10. "NOV" means Notice of Violation.
11. "STP" means sewage treatment plant.

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

1. The Town of Mt. Jackson owns and operates the Mt. Jackson STP under the terms of the Permit. The Permit, which was reissued on December 31, 2001, contains a December 31, 2006, expiration date.
2. The Permit authorizes Mt. Jackson to discharge treated sewage from the STP to the North Fork Shenandoah River, Shenandoah River Subbasin, Potomac River Basin.
3. On January 29, 2002, staff of DEQ's Valley Regional Office conducted a routine inspection of the Mt. Jackson STP. During the inspection, staff observed that the STP had caused an accumulation of solids (sludge blanket) in the North Fork Shenandoah River at Outfall 001. Based on the inspection, on February 19, 2002, DEQ issued NOV No. W2002-02-V-0001 to Mt. Jackson citing the following violations of State Water Control Law, the VPDES Permit Regulation and the Permit:
  - a. Alteration of the physical, chemical or biological properties of state waters and making them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses in apparent violation of Va. Code § 62.1-44.5.A.(ii) and 9 VAC 25-31-50.A.2. of the VPDES Permit Regulation; and,
  - b. Failure to maintain state waters, including wetlands, free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life in apparent violation of 9 VAC 25-260-20(A) of the General Standard and Part

## II.F.2 of the Permit

4. On March 5, 2002, representatives of the Town of Mt. Jackson and the VRO met in an informal settlement conference to discuss the apparent violations cited in the February 19, 2002, NOV. During the meeting, the Mt. Jackson Town Manager explained that the sludge blanket had been removed from the stream shortly after the January 29, 2002, inspection using a septic tank pumper truck. DEQ staff subsequently inspected the outfall location and found that the sludge was successfully removed.
5. The Town of Mt. Jackson attributes the sludge blanket to the Town's inability to remove solids from the STP as frequently as needed. In order to prevent recurrence of the violation, Mt. Jackson has submitted a corrective action plan, dated March 5, 2002. The plan has been incorporated into Appendix A of the Order. In order to increase the frequency at which Mt. Jackson can remove solids from its treatment system, the corrective action plan identifies that Mt. Jackson will begin utilizing the lagoon and filter press located at the North Fork Regional STP for the storage, and dewatering of solids removed from the Mt. Jackson STP.
6. Operations staff is typically present at the Mt. Jackson STP between the hours of 7:00 A.M. and 4:00 P.M. This allows the STP operator to make adjustments at the STP in response to heavy rain events intended to prevent a solids loss during the rain event. In order to minimize the risk of a solids loss during a heavy rain event occurring between the hours of 4:00 P.M. and 7:00 A.M., the Order includes a provision for operations staff to monitor the STP and its discharge under such conditions.
7. The Mt. Jackson STP is scheduled to be taken offline in the summer of 2003 at which time the Town will connect by way of a new interceptor to the new North Fork Shenandoah Regional Sewer Authority's STP.

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

Accordingly the State Water Control Board, by virtue of the authority granted it pursuant to Va. Code §62.1-44.15(8a) and (8d), orders Mt. Jackson, and Mt. Jackson agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Mt. Jackson, and Mt. Jackson voluntarily agrees to pay a civil charge of \$3,500 in settlement of the violations cited in this Order.

1. **\$35.00** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "**Treasurer of the Commonwealth of Virginia**" and sent to:

**Receipts Control  
Department of Environmental Quality**

**P. O. Box 10150  
Richmond, Virginia 23240**

Mt. Jackson shall include its Federal Identification Number with the civil charge payment and shall note on the check that the payment is being made pursuant to this Order.

2. **\$3,465.00** of this civil charge shall be satisfied upon completion by Mt. Jackson of a Supplemental Environmental Project (SEP) pursuant to Va. Code § 10.1-1186.2 and as described in Appendix B of this Order.
3. By signing this Order, Mt. Jackson certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.
4. In the event that the SEP is not performed as described in Appendix B, upon notification by the Department, Mt. Jackson shall pay the amount specified in Paragraph 2 above within 30 days of such notification according to the procedures specified in Paragraph 1 above, unless an alternate project has been agreed upon by the parties.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Mt. Jackson, for good cause shown by Mt. Jackson, 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; (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. For purposes of this Order and subsequent actions with respect to this Order, Mt. Jackson admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mt. Jackson 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. Mt. Jackson declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *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 Mt. Jackson 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. Mt. Jackson 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. Mt. Jackson shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mt. Jackson 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 Mt. Jackson 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 Mt. Jackson. Notwithstanding the foregoing, Mt. Jackson agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Mt. Jackson. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mt. Jackson 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, Mt. Jackson voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

Mt. Jackson voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of the Town of Mt. Jackson, on behalf of the Town.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

**APPENDIX A  
SCHEDULE OF COMPLIANCE**

**THE TOWN OF MT. JACKSON**

1. By March 31, 2002, the Town of Mt. Jackson shall begin utilizing the lagoon and filter press located at the North Fork Regional STP as a supplemental method for management of the wastewater treatment solids generated at the Mt. Jackson STP.
2. If at any time during the period that the Order remains in effect, should the National Weather Service forecast a precipitation event of 2 inches or greater, the Town of Mt. Jackson shall ensure that an operator is present at the Mt. Jackson STP between the hours of 4:00 P.M. and 7:00 A.M. The operator shall spend a sufficient amount of time at the STP between these hours to:
  - a. make a thorough assessment of the effects of such precipitation events on STP operations;
  - b. allow the operator to make any necessary adjustments to the STP in response to such precipitation events to minimize the risk of a loss of solids during such events; and,
  - c. collect a minimum of one grab sample of the treated effluent to be analyzed for biochemical oxygen demand (BOD) and total suspended solids (TSS).

Should the predicted duration of such precipitation events be greater than 24 hours, Mt. Jackson shall ensure the presence of the operator to satisfy the above criteria over the period of time covered by the predicted event.

3. For any precipitation event triggering the provisions set forth above in Paragraph 2, Mt. Jackson shall prepare a report of the steps taken to ensure compliance with the Order and shall include the report with the next Discharge Monitoring Report submitted to DEQ.
4. Throughout the period that the Order remains in effect, Mt. Jackson STP staff shall, on a minimum frequency of once per week, observe the condition of the North Fork Shenandoah River at and immediately down stream of Outfall 001. Any observation of adverse impact to the receiving stream and/or unusual discharge shall be reported to the VRO in accordance with the terms of the Permit.

**APPENDIX B**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**  
**THE TOWN OF MT. JACKSON**

1. The Supplemental Environmental Project to be performed by Mt. Jackson is the surface treatment of two sections of the driveway at the Mt. Jackson STP complex. Specifically, Mt. Jackson shall grade, surface prime and treat two sections of driveway located at the STP. The sections of driveway covered under the SEP are: (1) a section 258 feet long and 19 feet wide located between the Mt. Jackson STP Control Building on the north side of the driveway and a set of mobile homes on the south side of the driveway; and, (2) a section 50 feet long and 17 feet wide located to the west of the Mt. Jackson STP Control Building. The materials used in the surface priming and treatment process shall meet Virginia Department of Transportation "RC 250" specifications.
2. The cost of the SEP to Mt. Jackson shall not be less than \$3465.00. In the event that the final cost of the SEP is less than this amount, Mt. Jackson shall pay the remainder of the amount to the Commonwealth of Virginia, unless otherwise agreed to by the Department.
3. Mt. Jackson acknowledges that it is solely responsible for completion of the SEP project. Any delegation of funds, tasks, or otherwise by Mt. Jackson to a third party, shall not relieve Mt. Jackson of its responsibility to complete the SEP as contained in this Order.
4. The SEP shall be completed by November 15, 2002.
5. Mt. Jackson shall submit verification to the Department in the form of a Final SEP Report within 30 days of the project completion date. The Final SEP Report shall identify the final overall cost of the SEP and shall include invoices or other documentation of project costs.
6. In the event that Mt. Jackson publicizes the SEP or the results of the SEP, Mt. Jackson shall state in a prominent manner the project is part of a settlement for an enforcement action.
7. The Department has the sole discretion to determine whether the SEP has been completed in a satisfactory manner.