



**COMMONWEALTH of VIRGINIA**  
*DEPARTMENT OF ENVIRONMENTAL QUALITY*

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

**SPECIAL ORDER BY CONSENT**

**ISSUED TO**

**RAPHINE ENVIRONMENTAL IMPROVEMENT COMPANY, L.L.C.**

**(VPDES Permit No. VA0068454)**

**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 Raphine Environmental Improvement Company, L.L.C., for the purpose of resolving certain violations of environmental laws 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. “Order” means this document, also known as a Consent Special Order.
6. “STP” means sewage treatment plant.
7. “Koogler” means Glenn M. Koogler, the original owner and operator of the Facility.
8. “REIC” means Raphine Environmental Improvement Company, L.L.C. (the present owner), which currently owns and operates the Facility. Glenn M. Koogler is listed as a principal officer/registered agent of the company.
9. “Facility” and “Plant” means the REIC STP located in Rockbridge County, Virginia.
10. “VRO” means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
11. “The Permit” means Virginia Pollutant Discharge Elimination System Permit No. VA0068454 issued to the Facility, which became effective December 12, 1999 and expired December 12, 2004. Permit limits include pH, biochemical oxygen demand [“BOD”], total suspended solids [“TSS”], fecal coliform, ammonia, and total residual chlorine [“TRC”].
12. “2003 Order” means the Consent Special Order that became effective December 9, 2003, issued to Glenn M. Koogler. The 2003 Order cancelled and superceded the Consent Special Order issued on June 21, 1999.
13. “NOV” means Notice of Violation.
14. “Regulation” means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.
15. “P.E.R.” means preliminary engineering report.
16. “O&M” means operations and maintenance.

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

1. REIC owns and operates the sewage treatment facility serving approximately 90 mobile homes, the Days Inn Motel, two apartment buildings, certain single family residences, and the Raphine Wilco and Raphine Texaco service stations in Rockbridge County, Virginia, which was the subject of the 1999 Permit. The Facility discharges treated wastewater to Moores Creek in the Upper James River basin.

2. On June 21, 2002, REIC apparently took ownership of the Facility; however, Koogler did not inform DEQ nor submit a notice to the Department for transfer of the permit to a new owner.
3. On December 9, 2003 DEQ issued the 2003 Consent Special Order to the Facility to address ammonia effluent exceedances. The 2003 Order required that not later than December 31, 2006, REIC/Koogler would come into compliance with the Permit, State Water Control Law and the Regulation by either:
  - a. Connecting the Facility to public sewer and thereby eliminating all discharges from the Facility.
  - b. Installing an on-site disposal system approved by the local Department of Health and closing the Facility, thereby eliminating all discharges from the Facility.
  - c. Upgrading the Facility to meet the Permit's final effluent limitations.

The 2003 Order also provided interim TSS and ammonia effluent limitations.

REIC has notified DEQ of its intention to connect to the proposed Rockbridge County PSA sewer line extension that is presently scheduled to be completed in late 2006.

4. The Permit, the Regulation and/or the 2003 Order required REIC/Koogler to submit an application for reissuance of the Permit by June 15, 2004. REIC/Koogler did not submit an approvable Permit application until December 14, 2004
5. DEQ issued Warning Letter No. W2004-06-V-1007 on June 21, 2004, to REIC/Koogler for failure to submit a complete application by June 15, 2004 for reissuance of the Permit.
6. DEQ issued NOV No. W2004-06-V-0005 on June 22, 2004, to REIC/Koogler for violations of the Permit's BOD effluent limitations in December 2003, February and April 2004, and the 2003 Order's ammonia interim effluent limitations occurring during January 2004, March and April 2004.
7. DEQ issued NOV No. W2004-07-V-0002 on July 7, 2004, to Koogler for failure to submit a complete application by June 15, 2004 for reissuance of the Permit.
8. DEQ issued NOV No. W2004-08-V-0001 on August 11, 2004, to REIC/Koogler for violations of the 2003 Order's ammonia interim effluent limitations occurring during May and June 2004.
9. On August 17, 2004, DEQ met with REIC/Koogler in an informal conference to discuss the NOV and ongoing failure to submit a complete and approvable permit application and the Order's ammonia interim effluent limitations violations. The

August 17, 2004, meeting included discussions of any corrective actions that REIC/Koogler may have taken to date to address the Facility's problems and the need for a plan and schedule of corrective actions to return the Facility to compliance with effluent limitations.

10. DEQ issued NOV No. W2004-09-V-0002 on September 22, 2004, to REIC/Koogler for apparent violations of the 2003 Order's ammonia interim effluent limitations occurring in July 2004.
11. DEQ issued NOV No. W2004-11-V-0002 on November 8, 2004, to REIC/Koogler for apparent violations of the 2003 Order's ammonia interim effluent limitations occurring during August and September 2004.
12. On December 12, 2004, the Permit expired. On December 13, 2004, DEQ staff conducted an unannounced inspection at the Facility and observed a continuing and unauthorized discharge from the Facility.
13. On December 14, 2004, REIC/Koogler submitted an approvable Permit application. However, REIC/Koogler was also required to submit a closure plan and draft financial assurance mechanism by June 15, 2004, in order for DEQ to reissue the Permit. DEQ asserts that, to date REIC has not submitted an approvable closure plan and financial assurance mechanism.
14. DEQ asserts that REIC's failure to submit an approvable closure plan and draft financial assurance mechanism is due to REIC's apparent difficulties in securing and contracting a 3<sup>rd</sup> party operator to operate the Facility in accordance with the regulatory requirements or provide an approvable closure plan.
15. DEQ issued NOV No. W2004-01-V-0002 on January 5, 2005, to REIC/Koogler for apparent violations of ammonia interim effluent limitations contained in the 2003 Order occurring during October and November 2004, late submittal of the permit application due June 15, 2004, failure to submit a facility closure plan due June 15, 2004, failure to submit a draft financial assurance mechanism due June 15, 2004 and for apparent unpermitted discharges following the expiration of the Permit.
16. On February 2, 2005, DEQ met with REIC/Koogler in an informal conference to discuss the January 5, 2005, NOV and resolution of the violations. The February 5, 2005 meeting included discussions of the Facility operations and the need for submittals of an approvable closure plan and financial assurance mechanism and a plan to address the continuing apparent violations of the 2003 Order's ammonia interim effluent limitations
17. DEQ issued NOV No. W2005-03-V-0010 on March 30, 2005, to REIC/Koogler for violations of late submittal of the permit application due June 15, 2004, failure to submit a facility closure plan due June 15, 2004, failure to submit a draft financial

assurance mechanism due June 15, 2004 and for apparent unpermitted discharges following the expiration of the Permit.

18. DEQ issued NOV No. W2005-05-V-0011 on May 10, 2005, to REIC/Koogler for apparent unpermitted discharges in February and March 2005 following the expiration of the Permit on December 12, 2004.

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

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders REIC, and REIC agrees, to perform the actions described in Appendix A, Appendix B and Appendix C of this Order.
2. Within 30 days of the effective date of this Order, REIC shall pay a civil charge of **\$9600** in settlement of the violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

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

REIC shall also include its federal identification number (FIN) with the check, certified check, money order, or cashier's check.

3. Until the Facility is connected to the proposed County sewer line and taken offline, REIC will operate the STP in a workmanlike fashion so as to produce the best quality effluent that the Facility is capable of producing.
4. This Order cancels and supersedes the 2003 Order.

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

1. The Board may modify, rewrite, or amend the Order with the consent of REIC, for good cause shown by REIC, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein 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; 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, REIC admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. REIC 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. REIC 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 REIC 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. REIC 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. REIC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. REIC 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 Director of the Valley Regional Office within 24 hours of learning of any condition above, which REIC intends to assert will result in the

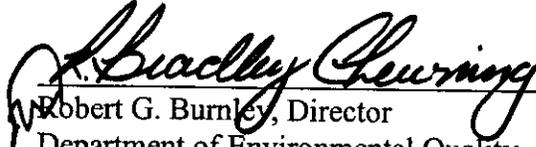
impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

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 REIC. Notwithstanding the foregoing, REIC 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. REIC petitions the VRO Director to terminate the Order after it has completed all requirements of this 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 REIC.

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

12. The undersigned representative of REIC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind REIC to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of REIC.
13. By its signature below, the Raphine Environmental Improvement Company, L.L.C. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 10/3, 2005.

  
Robert G. Burnley, Director  
Department of Environmental Quality

Raphine Environmental Improvement Company, L.L.C. agrees to the issuance of this Order.

By: Glenn M. Koogler  
Glenn M. Koogler

Title: Member/Manager REIC

Date: 7/12/05

Commonwealth of Virginia

City/County of Harrisonburg

The foregoing document was signed and acknowledged before me this

12<sup>th</sup> day of July, 2005, by Glenn M. Koogler,

(name)

who is the sole member of Raphine Environmental Improvement Company, L.L.C., on

(title)

behalf of said company.

Keri M. Fore

Notary Public

My commission expires: 4/30/2007

**APPENDIX A**  
**SCHEDULE OF COMPLIANCE**  
**RAPHINE ENVIRONMENTAL IMPROVEMENT COMPANY, L.L.C.**

1. **By August 1, 2005**, REIC shall establish an Irrevocable Standby Letter of Credit in the amount of \$25,000. The letter of credit shall meet the requirements of 9 VAC 25-650-110.B. The financial assurance mechanism (Letter of Credit) is to be used only for the purposes of the operations and closure of the Facility should REIC cease operations of the Facility before connection to the proposed Rockbridge County sewer line extension and proper closure of the Facility.
2. **By August 15, 2005**, REIC shall submit to DEQ for review and approval a plan to expeditiously remove and properly dispose of any excess sludge built up within the Facility's lagoons. The plan shall include a schedule for implementation. REIC shall respond to any comments regarding the sludge removal/disposal plan **within 30 days** of receipt of written comments. Upon approval of the sludge removal plan, said plan shall be incorporated by reference into this Order and become enforceable as part of this Order.
3. **By August 15, 2005**, REIC shall submit to DEQ for review and approval a plan and schedule to conduct influent sampling and testing to identify any sources of unusually high organic strength wastewater that may affect the Facility's performance. The plan shall include a schedule for implementation. REIC shall also indicate within the plan the actions it will take to remove or eliminate any sources of unusually high organic strength wastewater from the system. REIC shall respond to any comments regarding the influent testing plan **within 30 days** of receipt of written comments. Upon approval of the influent testing plan, said plan shall be incorporated by reference into this Order and become enforceable as part of this Order.
4. **By August 15, 2005**, REIC shall submit to DEQ the number, description and addresses of ALL known connections (whether mobile homes, single family residences, motels, service stations etc.) serviced by the sewage treatment plant along with the connection entity's owners. This information shall include the number of mobile homes and whether the mobile home park owns the trailers or not. REIC shall also include copies of ALL known contracts and/or service agreements with the connections. REIC shall update DEQ promptly of any other connections discovered during any investigations.
5. **By December 1, 2005**, REIC shall submit to DEQ for review and approval a closure plan that addresses closure following the connection to the collection system, or in the event REIC ceases operation prior to making the connection, a closure plan that addresses continued operation by a qualified third-party operator to be chosen by DEQ, in its sole discretion, such operation to be continued until the connection is made, the closure plan then to address closure following connection to the collection

system. REIC shall respond to comments regarding the closure plan **within 30** days of receipt of written comments.

6. **By December 31, 2006**, but in no case **later than 90** following availability of the proposed Rockbridge County PSA expanded collection system, REIC shall come into compliance with the State Water Control Law and the Regulation by connecting the Facility to public sewer and thereby eliminating all discharges from the Facility. Rockbridge County PSA is presently projecting the collection system will be completed and online on or **about December 31, 2006**.
7. REIC shall complete closure of the Facility **within 180 days** of connection to the County's collection system in accordance with an approved closure plan.
8. REIC shall submit semi-annual progress reports to DEQ, with the first report being due **October 10, 2005**. Subsequent Progress Reports will be due by **July 10, and January 10**, along with the Facility's Discharge Monitoring Report until the cancellation of the Order. The semi-annual progress reports shall contain:
  - a. a summary of all work completed since the previous progress report in accordance with this Order.
  - b. a projection of the work to be completed during the upcoming semi-annual period in accordance with this Order; and
  - c. a statement regarding any anticipated problems in complying with this Order.
9. No later than **14 days** following a date identified in the above schedule of compliance REIC shall submit to DEQ's Valley Regional Office a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

**APPENDIX B – OPERATING REQUIREMENTS**

From the date of REIC’s execution of this Order, REIC shall comply with all of the requirements of this Appendix B. Such requirements shall continue in effect until the Facility ceases discharging pursuant to the Schedule of Compliance in Appendix A.

**Part I**

A. **EFFLUENT LIMITS.** Unless otherwise specified in this Order, the effluent limits in Appendix C to this Order will apply until the Facility ceases discharging pursuant to the Schedule of Compliance listed in Appendix A.

B. **ADDITIONAL TRC LIMITATIONS AND MONITORING REQUIREMENTS**

1. REIC shall monitor the Total Residual Chlorine (TRC) at the outlet of the chlorine contact tank, prior to dechlorination, once per day by grab sample.
2. No more than 3 samples for TRC taken after the chlorine contact tank, prior to dechlorination, shall be less than 1.0 mg/L for any one calendar month.
3. No TRC sample collected after the chlorine contact tank, prior to dechlorination, shall be less than 0.6 mg/L.
4. If chlorine disinfection is not used, E. coli shall be limited and monitored by the REIC as specified below:

<u>Requirements</u>	<u>Discharge Limit</u>	<u>Monitoring</u>	
	<u>Monthly Average</u>	<u>Frequency</u>	<u>Sample</u>
<u>Type</u>			
E. coli (N/100 mL)	126 (Geometric Mean)	1/Week Between 10 a.m. and 4 p.m.	Grab

E. coli sampling and analysis shall be performed in accordance with 40 CFR 141.21, except that maximum holding times shall be limited in accordance with 40 CFR 136 to six hours.

This E. coli requirement, if applicable, shall substitute for the TRC requirements specified elsewhere in Part I.

C. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS -  
ADDITIONAL INSTRUCTIONS

1. Quantification Levels (QLs) shall be as follows:

<u>Effluent Characteristic</u>	<u>Quantification Level</u>
BOD <sub>5</sub>	5 mg/L
Suspended Solids	1.0 mg/L
Chlorine	0.10 mg/l
Ammonia-N	0.2 0 mg/L

2. Compliance Reporting Under Part I.A.

- a. **Monthly Average** -- Compliance with the monthly average limitations and/or reporting requirements for the parameters listed in Part I.C.1. above shall be determined as follows: All data below the specified quantification level (QL) shall be treated as zeros. All data equal to or above the QL shall be treated as reported. Arithmetic concentration and/or loading averages (as applicable) shall be calculated using all reported data for the month, including the defined zeros. These averages shall be reported on the Discharge Monitoring Report (DMR). If all data are less than the method QL, then “<QL” shall be reported on the DMR for the concentration and/or loading values. Otherwise the average values shall be reported as calculated.
- b. **Maximum Weekly Average** -- Compliance with the weekly average limitations and/or reporting requirements for the parameters listed in Part I.C.1. above shall be determined as follows: All data below the test method QL shall be treated as zeros. All data equal to or above the QL shall be treated as reported. Arithmetic concentration and/or loading averages (as applicable) shall be calculated using all reported data, including the defined zeros, collected within each complete calendar week entirely contained within the reporting month. The maximum weekly concentration and/or loading averages thus determined shall be reported on the DMR. If all data are less than the method QL, then “<QL” shall be reported on the DMR for both the concentration and/or loading values. Otherwise the average values shall be reported as calculated.
- c. Any single datum required shall be reported as “<QL” if it is less than the QL listed in Part I.C.1. above. Otherwise, the numerical value shall be reported.
- d. Monitoring results reported on the Discharge Monitoring Report (DMR) shall be reported to the accuracy of the test, which must be capable of at least the same number of significant digits as the Order limit for the given parameter. Rounding the results to the number of significant digits in the Order, where the test method is sensitive

enough to report more, is not acceptable. If there is not a method allowed by the Order that is accurate enough to measure two significant digits below the value of 1.0, it shall be REIC's responsibility to provide documentation for DEQ approval demonstrating that only one significant figure can accurately be reported.

D. OTHER REQUIREMENTS AND SPECIAL CONDITIONS

1. **Materials Handling/Storage** -- Any and all product, materials, industrial wastes, and/or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, and/or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, and/or stored in such a manner so as not to permit a discharge of such product, materials, industrial wastes, and/or other wastes to State waters, except as expressly authorized.
2. **Operations and Maintenance Manual Requirement** -- REIC shall maintain a current and approved O&M Manual for the treatment works. This manual shall detail the practices and procedures, which will be followed to ensure compliance with the requirements of this Order. This manual shall include, but not necessarily be limited to, the following items:
  - a. Treatment works design, treatment works operation, routine preventative maintenance of units within the treatment system, critical spare parts inventory and record keeping,
  - b. Techniques to be employed in the collection, preservation and analysis of effluent samples, and
  - c. Procedures for handling, storing, and disposing of all wastes, fluids, and pollutants characterized in Part I.D.1 that will prevent these materials from reaching state waters.

REIC shall operate the treatment works in accordance with the approved O&M Manual. Any changes in the practices and procedures followed by REIC shall be documented and submitted for staff approval within 90 days of the effective date of the changes. Upon approval of the submitted manual changes, the revised manual becomes an enforceable part of the Order.

3. **SMP Requirement** -- REIC shall conduct all sewage sludge use or disposal activities in accordance with its approved Sludge Management Plan (SMP). Any proposed changes in the sewage sludge use or disposal practices or procedures followed by REIC shall be documented and submitted for DEQ approval 90 days prior to the effective date of the changes. Upon approval, the amended SMP becomes an enforceable part of the Order. The Order may be modified to incorporate limitations/conditions necessitated by substantive changes in sewage sludge use or disposal practices.

4. **Licensed Operator Requirement** – REIC shall employ or contract at least one Class IV licensed wastewater works operator for this facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators. REIC shall notify DEQ-Valley Regional Office in writing whenever it is not complying, or has grounds for anticipating it will not comply with this requirement. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.
5. **Reliability Class** -- The treatment works shall meet Reliability Class II.
6. **Treatment Works Closure Plan** – If REIC plans to permanently close the facility, REIC shall submit to DEQ a closure plan for the treatment works. The plan shall address liquid and sludge removal, odor control measures, structure and pipe removal, steps to prevent unauthorized access, fill materials, final grading and seeding. The plan should contain proposed dates for beginning and completion of the work. The plan must be approved by DEQ prior to implementation. REIC shall sample once for each foot of drawdown, and, when the discharge no longer meets permit limits, the discharge shall cease and the rest of the lagoon contents shall be pumped and hauled to another, permitted facility for treatment and disposal.

## **Part II**

### STANDARD CONDITIONS

#### A. Monitoring

1. Samples and measurements taken as required by this Order shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under Title 40 Code of Federal Regulations Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this Order.
3. REIC shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

#### B. Records

1. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The individual(s) who performed the sampling or measurements;
  - c. The date(s) and time(s) analyses were performed;
  - d. The individual(s) who performed the analyses;

- e. The analytical techniques or methods used; and
  - f. The results of such analyses.
2. Except for records of monitoring information required by this Order related to REIC's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, REIC shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation and copies of all reports required by this Order, for a period of at least 3 years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to REIC, or as requested by the Board.

C. Reporting Monitoring Results

1. REIC shall submit the results of the monitoring required by this Order not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this Order. Monitoring results shall be submitted to:

Department of Environmental Quality  
Valley Regional Office  
P.O. Box 3000  
Harrisonburg, Virginia 22801

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the Department.
3. If REIC monitors any pollutant specifically addressed by this Order more frequently than required by this Order using test procedures approved under Title 40 of the Code of Federal Regulations Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this Order, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the Department.
4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this Order.

D. Duty to Provide Information

REIC shall furnish to the Department, within a reasonable time, any information which the Board may request to determine whether cause exists for modifying this Order or to determine compliance with this Order. The Board may require REIC to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from its discharge on the quality of State waters, or such other information as may be necessary to accomplish the purposes of the State

Water Control Law. REIC shall also furnish to the Department upon request, copies of records required to be kept by this Order.

E. Unauthorized Discharges

Except in compliance with this Order, it shall be unlawful for any person to:

1. Discharge into State waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such State waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

F. Reports of Unauthorized Discharges

Any regulated party who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon State waters in violation of Part II.E.; or who discharges or causes or allows a discharge that may reasonably be expected to enter State waters in violation of Part II.E., shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this Order.

Discharges reportable to the Department under the immediate reporting requirements of other regulations are exempted from this requirement.

G. Reports of Unusual or Extraordinary Discharges

If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter State waters, REIC shall promptly notify, in no case later than 24 hours, the Department by telephone after the discovery of the discharge. This notification shall provide all available details

of the incident, including any adverse affects on aquatic life and the known number of fish killed. REIC shall reduce the report to writing and shall submit it to the Department within five days of discovery of the discharge in accordance with Part II.H.2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

#### H. Reports of Noncompliance

REIC shall report any noncompliance which may adversely affect State waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time REIC becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:
  - a. Any unanticipated bypass; and
  - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within 5 days and shall contain:
  - a. A description of the noncompliance and its cause;
  - b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The Board may waive the written report on a case-by-case basis for reports of noncompliance under Part II.H. if the oral report has been received within 24 hours and no adverse impact on State waters has been reported.

3. REIC shall report all instances of noncompliance not reported under Parts II.H.1. or 2., in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II.H.2.

**NOTE: The immediate (within 24 hours) reports required in Parts II.F, G, and H may be made to the Department's Valley Regional Office at (540) 574-7800 (voice) or (540) 574-7878 (fax). For reports outside normal working hours, leave a message and**

**this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.**

**I. Notice of Planned Changes**

1. REIC shall give notice to the Department as soon as possible of any planned physical alterations or additions to the facility. Notice is required only when:
  - a. REIC plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
    - (1) After promulgation of standards of performance under Section 306 of the Clean Water Act which are applicable to such source; or
    - (2) After proposal of standards of performance in accordance with Section 306 of the Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal;
  - b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this Order; or
  - c. The alteration or addition results in a significant change in REIC's sludge use or disposal practices, and such alteration, addition, or change may justify the amendment of the Order to include conditions that are different from or absent in the existing Order, including notification of additional use or disposal.
2. REIC shall give advance notice to the Department of any planned changes in the facility or activity which may result in noncompliance with Order requirements.

**J. Signatory Requirements**

1. Reports. All reports required by this Order shall be signed as follows:
  - a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment

recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
  - c. For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
2. Reports, etc. All reports required by this Order, and other information requested by the Board shall be signed by a person described in Part II.J.1., or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- a. The authorization is made in writing by a person described in Part II.J.1.;
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
  - c. The written authorization is submitted to the Department.
3. Changes to authorization. If an authorization under Part II.J.1. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II.J.2. shall be submitted to the Department prior to or together with any reports, or information to be signed by an authorized representative.
4. Certification. Any person signing a document under Part II.J.1. shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false

information, including the possibility of fine and imprisonment for knowing violations."

K. Duty to Comply

REIC shall comply with all conditions of this Order. Any Order noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this Order may constitute a violation of the State Water Control Law but not the Clean Water Act. Order noncompliance is grounds for enforcement action. REIC shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this Order has not yet been modified to incorporate the requirement.

L. Effect of a Order

This Order does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of Federal, State or local law or regulations.

M. State Law

Nothing in this Order shall be construed to preclude the institution of any legal action under, or relieve REIC from any responsibilities, liabilities, or penalties established pursuant to any other State law or regulation or under authority preserved by Section 510 of the Clean Water Act. Except as provided in Order conditions on "bypassing" (Part II.S), and "upset" (Part II.T.) nothing in this Order shall be construed to relieve REIC from civil and criminal penalties for noncompliance.

N. Oil and Hazardous Substance Liability

Nothing in this Order shall be construed to preclude the institution of any legal action or relieve REIC from any responsibilities, liabilities, or penalties to which REIC is or may be subject under Sections 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Proper Operation and Maintenance

REIC shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by REIC to achieve compliance with the conditions of this Order. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or

similar systems which are installed by REIC only when the operation is necessary to achieve compliance with the conditions of this Order.

P. Disposal of Solids or Sludges

Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering State waters.

Q. Duty to Mitigate

REIC shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Order which has a reasonable likelihood of adversely affecting human health or the environment.

R. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for REIC in an enforcement action that it would have been necessary to halt or reduce the regulated activity in order to maintain compliance with the conditions of this Order.

S. Bypass

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. REIC may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II.S.2. and S.3.

2. Notice

- a. Anticipated bypass. If REIC knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least ten days before the date of the bypass.
- b. Unanticipated bypass. The REIC shall submit notice of an unanticipated bypass as required in Part II.H.

3. Prohibition of bypass

- a. Bypass is prohibited, and the Board may take enforcement action against REIC for bypass, unless:
  - (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

- (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - (3) REIC submitted notices as required under Part II.S.2.
- b. The Board may approve an anticipated bypass, after considering its adverse effects, if the Board determines that it will meet the three conditions listed above in Part II.S.3.a.

T. Upset

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based effluent limitations if the requirements of Part II.T.2. are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.
2. If REIC wishes to establish the affirmative defense of upset, it shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - a. An upset occurred and that REIC can identify the cause(s) of the upset;
  - b. The facility was at the time being properly operated;
  - c. REIC submitted notice of the upset as required in Part II.H.; and
  - d. REIC complied with any remedial measures required under Part II.Q.
3. In any enforcement proceeding if REIC is seeking to establish the occurrence of an upset it has the burden of proof.

U. Inspection and Entry

REIC shall allow the Director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon REIC's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Order;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

V. Severability

The provisions of this Order are severable, and if any provision of this Order or the application of any provision of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order shall not be affected thereby.

## APPENDIX C – INTERIM EFFLUENT LIMITS

### Effluent Limitation and Monitoring Requirements – REIC, L.L.C.

1. As provided for in the Order, the Facility is authorized to discharge from outfall serial number 001. Such discharges shall be limited and monitored at outfall 001 as specified below, from the date of REIC’s execution of this Order until the Facility is taken offline as anticipated in **paragraph 6** of Appendix A hereto.

This discharge shall be limited and monitored as specified below:

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>				<u>MONITORING REQUIREMENTS</u>		
	<u>Monthly Average</u>		<u>Weekly Average</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
Flow (MGD) <sup>a</sup>	NL		NA	NA	NL	1/Day	Estimate
pH (standard units)	NA		NA	6.5	9.5	1/Day	Grab
BOD <sub>5</sub> <sup>c</sup>	30 mg/L	4.0 kg/d	45 mg/L	6.0 kg/d	NA	1/Month	Grab
Suspended Solids <sup>c</sup>	78 mg/L	10 kg/d	117 mg/L	15 kg/d	NA	1/Month	Grab
Ammonia-N (mg/L) (Jan-May) <sup>c</sup>	NL		NL	NA	NA	1/Month	Grab
Total Residual Chlorine (TRC)(mg/L) <sup>b,c</sup>	0.15		0.18	NA	NA	1/Day	Grab

NL = No Limitation, monitoring required NA = Not Applicable

- a. The design flow of this treatment facility is 0.035 MGD.
- b. See Part I.B. for disinfection requirements.
- c. See Part I.C. for additional monitoring instructions.
- d. There shall be no discharge of floating solids or visible foam in other than trace amounts.